TIPS ON ESTATE PLANNING

BY

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A THANK YOU

This 2019 revision is minor with regard to the number of changes to the 2015 revision. I again extend my thanks to my good friend John Logan for the illustrations, and my daughter, Heather Ingrum Gipson, who is also a lawyer, for the rewriting and updating of the pamphlet in 2015.

John has been a friend since I opened my office in Branson, MO, in 1978, and has done numerous illustrations for me over the years, mostly in connection with special events in the lives of people I know. He is an extremely talented artist and editorial cartoonist. His illustrations are always in good taste, even when I ask him to poke fun at people. Perhaps some of the public figures he takes to task may not always judge the cartoons to be in good taste, but the cartoons are always thought provoking and draw attention to issues being discussed and debated in the community.

Heather had helped me on a part time basis long distance for several years when her children were younger. In June 2018 she went to work full time for Department of the Army JAG Corps in their Fair Labor Standards Act Section at the Pentagon. Obviously, her mother and I are quite proud of her. She and her family will, in all likelihood, stay in the Arlington, Virginia, area after my son-in-law retires from the Air Force, which will not be that many years in the future.

Brad Allen started working full time with me in June of 2018 as an attorney, and it has been a real plus to have him here. Brad's mother, Kay Allen, has worked with me for 20 plus years as a legal assistant, and has proven to be a great asset for my office.

In any event, I hope this slightly updated version will be helpful to those of you who read it.

May 31, 2019
Branson, MO

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THE NOT SO FINE PRINT: Unless the context otherwise requires, all words used in the singular include the plural, all words used in the plural include the singular, and words used in any gender include all genders.

Further, nothing in this pamphlet should be construed to create any confidential or attorney/client relationship, nor does any statement or information on these pages constitute legal advice. Given the nature of changing law and times, the substantive content in this pamphlet should not always be considered completely current and you should contact an attorney to discuss estate planning matters.

MANAGING YOUR ASSETS
OR
"HOW TO KEEP YOUR ASSETS FROM YOUR KIDS
(UNTIL YOU WANT THEM TO HAVE IT)"

When it comes to estate planning, most people want **continued use of their assets during their lifetimes, to distribute those assets according to their wishes after they die, and to accomplish both as inexpensively as possible.** This pamphlet will provide you with the information you need to begin thinking about your own estate plan. As will become clear, there is no "one-size-fits-all" solution to estate planning.

State and federal laws have changed through the years to make it less expensive to pass assets on to your children. These laws provide clients with more choices than ever to accomplish their estate planning goals. This pamphlet will discuss those changes and touch on estate planning topics like: Living Wills, Durable Powers of Attorney, Revocable Trusts, Credit Shelter Trusts, Wills, Nonprobate Transfers, Probate (including fees and expenses), Intestacy (dying without a Will), Prenuptial Agreements (and why they might be important in estate planning), Q-tip Trusts (which have nothing to do with personal hygiene), care of your minor children if both you and your spouse die, how to qualify for assistance to pay nursing home bills for a spouse or parents, and how all the preceding can save you and your family money, while still keeping you independent and passing your property to whomever you wish after your death (this includes family, friends, and charities).

For starters, did you know:

- In Missouri, nonresidents can serve as Personal Representative of an estate, as Trustee of a Trust, or as Attorney-in-Fact under a Power of Attorney?

- A Power of Attorney in Missouri can either be "durable" (it continues after incapacity or disability) or "non-durable" (it terminates upon incapacity or disability); but, both a "durable" and "non-durable" Power of Attorney terminate upon the Principal's death?

- Missouri no longer has an inheritance tax? Additionally, the Federal Estate Tax applies to fewer and fewer estates because the amount that can pass free of estate tax has been raised numerous times since the mid-1970's. In fact, less than .01 percent of people who pass away in the United States pay any Federal Estate Tax.

- Missouri has a Nonprobate Transfers Law which provides a method of completely avoiding probate without using Trusts or joint ownership of property?

- People do not have to sell or give away all of their assets in order to receive assistance in paying nursing home bills if one of the spouses needs nursing home care? In fact, following such a course of action may actually disqualify a person from being able to receive financial assistance for nursing home care.

When tailoring an estate plan, I consider the circumstances unique to each client and then advise which legal options best fit their estate planning goals. Through this pamphlet, it is my intention to provide you with an overview of those legal options available and point out things you may consider when defining your personal estate planning goals. Keeping that in mind, let's dig into the details.

AN OVERVIEW OF PROBATE AND (SOME) OF ITS MANY ALTERNATIVES

What is Probate?

Probate is a legal process for collecting assets, paying debts, and insuring that property is distributed to the people entitled to it under the law after a person dies. If there is a valid Will, then the property is distributed in accordance with the Will. If there is no Will the state legislature has written one for its residents called the state intestacy statute that says "who gets the money." The court oversees an individual, known as the ***Personal Representative***, who distributes the deceased's property according to the Will or the state intestacy statute.

Probate: Myth v. Reality

If you have endured a friend's recounting of every single detail involving the probate of her Great Aunt Ethel's estate, you may have heard a lot of misinformation on the topic. In this section, I will attempt to replace these probate myths involving "someone's cousin twice removed" with accurate legal information.

MYTH: The reason the probate judge and the lawyer want to keep estates open so long is because they make more money that way.

REALITY: The lawyer's fee is generally based on a percentage of the value of the estate. It does not matter whether the estate is open nine months or nine years. Keeping the estate open longer only increases the amount of work the lawyer has to do without increasing the fee. Logically, the lawyer would prefer to have the estate closed as soon as possible. The judge's salary is set by state statute, and is not in any way dependent on how long an estate is open.

MYTH: Lawyers always want overvalue probate assets so that they can collect a larger fee.
REALITY: A higher value assigned to the decedent's assets would increase the lawyer's fee. However, it is better to assign the true value to the probate assets. If the assets are undervalued, then the probate inventory value will be the new income tax basis in the property for purposes of calculating gain when it is sold. If the assets are undervalued for probate purposes, then a sizable gain will be subject to income tax when the asset is eventually sold. Obviously, that does not serve the interests of the client or the beneficiaries.

MYTH: Probate fees will eat up 25% or more of the estate.
REALITY: Missouri has a fee set by state statute that the Personal Representative is entitled to receive. The lawyer is entitled to the same fee. This fee is based upon a percentage of the value of the personal property administered in the estate and the value of any real estate sold during the probate administration. The fee schedule set by state law is as follows:

Value of Assets	**Percentage**
First $5,000	5%
Next $20,000	4%
Next $75,000	3%
Next $300,000	2 3/4%
Next $600,000	2 1/2%
All amounts over $1,000,000	2%

For example, in an estate valued at $100,000, the lawyer's fee would be $3,300 and the Personal Representative's fee would be $3,300, a total of 6.6% of the estate. If the lawyer is also the Personal Representative, he is entitled to only one fee, not two, and the total fee would be 3.3% of the estate. In very rare circumstances involving an extraordinary amount of work, an attorney may petition the probate court for more than the statutory fee.

MYTH: I don't want a Will because then my estate won't have to go through probate.
REALITY: Whether you do or don't have a Will has no effect on whether or not your estate will have to be probated. If you own property in your name alone at your death that is not payable on death to some other person, it will need to be probated.

Avoiding the Probate Game (With the Help of Your Lawyer)
As the foregoing illustrates, there are many misconceptions about probate. It is important

to remember that ***estate planning is more than just writing a Will.*** In fact, fewer estates are being probated these days. The current trend is that most of decedents' assets pass to the proper people outside of the probate process. This happens by using one (or more) of the probate alternatives available like:

- Joint ownership of property
- Non-probate transfers
- Trusts
- Lifetime gifts to your family (sometimes with a retained right to use the gifted property for your life)

By using the various estate planning tools available, a lawyer can create a plan that satisfies the objectives and budget of almost every client. What might work best for a person with a $100,000 estate may be totally inappropriate for another person with a $100,000 estate, but a totally different family situation. In addition to the actual monetary value, lawyers consider other important factors such as: the ages of children (if any); the number of children; if there is a surviving spouse; whether this is a second marriage; the possibility of federal estate taxes problems in larger estates; the type of the assets owned; etc. The list of factors to consider is almost endless. Let's look more closely at some of these probate alternatives.

Assets that are Not Subject to Probate

- **Life insurance** paid to a named Beneficiary is not subject to probate.
- **Jointly-owned assets:** Assets owned with one or more other people that provide upon the death of one of the joint owners, the remaining owners automatically own the asset. This method has been used for many years to avoid probate with mixed results. Problems may arise when there is more than one child in the younger generation; when someone in the younger generation has creditor or marital problems; when one or more of the children die before the parent; or when the value of the estate makes it subject to federal gift taxes.
    - The current trend is to avoid using joint ownership, except between spouses. More often, people are using Trusts and/or Missouri's Nonprobate Transfers Law. These tools give almost all the advantages of joint ownership, without any of the drawbacks.
- **Nonprobate Transfers Law:** Missouri's Nonprobate Transfers Law enables a property owner to designate who will receive that property after he dies without the property passing through probate. During the owner's lifetime, the *Beneficiaries* (the people who are to receive the property after his death) have no rights in the property. The owner is free to change the Beneficiaries whenever he wants. There is no federal gift tax problem, as there is no completed gift. Best of all, it is relatively inexpensive. You really can have your cake and eat it too!
- **Revocable Trusts:** Assets held in trust at the time of a person's death are not

subject to probate. This is the most flexible means of passing property at death without probate costs. It has many advantages over Nonprobate Transfers; however, it is likely to be more expensive to establish than using Nonprobate Transfers. Also, as the name implies, the *Grantor* (the person establishing the Trust) keeps the power to change it in the future if circumstances change.

A WORD (OR TWO) ON REVOCABLE TRUSTS

Things to know about a Revocable Trust:

- It is also called a "Living Trust."
- You create it during your lifetime and you can change it whenever you like.
- It is a written agreement between you (the *Grantor*) and a *Trustee* where you transfer legal title to your assets to the Trustee. The Trustee then manages and distributes those assets according to your wishes.
- Don't think you are handing over all of your hard-earned assets to some stranger. ***You can be your own Trustee.*** We will talk a lot more about choosing Trustees later.
- You decide who receives the property in the Trust after your death (the *Beneficiary*) and when they will receive it. For example, you may decide that it's best that those assets going to young Beneficiaries remain in the Trust until they reach a specified age. The assets can be held in trust until the person is 21, 35, 45, or until death--you select the age.

The many advantages of a Revocable Trust

- A Revocable Trust allows you to avoid probate.
- You select who will manage assets for your benefit if you become incapacitated.
- You have the freedom to designate ***who*** will receive assets in your Trust at the time of your death.
- You can also decide ***when*** Beneficiaries will receive the assets.
- Because Trust assets are not subject to probate, the Trust agreement is not filed with the probate court like a Will. Accordingly, the Trust is not a matter of public

record, so it is a private way of passing assets at your death.

- The statutorily-prescribed probate fees mentioned previously (approximately 5% to 7% of the value of the estate) are completely eliminated by using a Trust. There will be some legal fees involved in establishing the Trust and in eventually helping in the distribution of assets when the Trust terminates; but, these fees will be substantially less than probate fees.
- Revocable Trusts can also be used as a means of segregating an inheritance, thereby insuring that it is not commingled with assets owned by that person and his spouse. This may or may not be important; but, it can be extremely important in the event of dissolution of marriage. Lawyers always think such positive thoughts!

Drawbacks of a Revocable Trust

If there is a disadvantage to establishing a Revocable Trust, it would be the cost. Although it is not as costly as probate fees, it is more expensive than having simple Wills drawn, due to the lawyer's time involved. Admittedly, there are "do-it-yourself" books out there that claim to guide you in preparing your own Trust. From this lawyer's point of view, that is sort of like buying a book on how to remove your appendix and then trying to do it yourself. Preparing your own Revocable Trust will not result in your death, as performing your own appendectomy likely would. However, the risk of making a mistake that causes a great deal of heartache for your family after you pass is high.

"Nothing is certain except death and taxes."

Benjamin Franklin's oft-cited maxim should not be a cause for concern for the majority of people thinking about their estate plan. Missouri has no inheritance or estate tax (commonly called a "death tax").

Prior to 2018, there was no Federal Estate Tax due unless the estate was worth more than $5,000,000.00 for an individual or $10,000,000.00 for married people in 2011. Further, these amounts were indexed to increase automatically with inflation through 2017.

Beginning in 2018 the amount that can be passed free of Federal Estate Tax is $11,200,000.00 for an individual or $22,400,000.00 for a married couple. These figures are also indexed for inflation and are applicable through 2025, when the 2017 tax changes in the Federal Estate, Gift and Generation Skipping Taxes sunset. In 2026 these taxes revert to pre-2018 amounts adjusted for inflation if Congress does nothing further.

So, as you can see, Federal Estate, Gift, and Generation Skipping Taxes impact very few estates, and the estimate is that those estates paying Federal Estate Tax will be 0.1 percent of the people dying in 2018.

For estates that are subject to Federal Estate Taxes, there are planning opportunities that will lessen the impact of these taxes, but as you can see this tax impacts very few people

I cannot predict the future actions of Congress, but the amount that can be passed free of Federal Estate Tax will likely not remain the same. There is always the potential that Congress will roll back the amount not subject to Federal Estate Tax, causing more estates to be subject to the tax. That is my guess, anyway.

WHOM DO I TRUST WITH MY TRUST?
Some Advice on Choosing a Trustee

If you have decided that a Trust is for you, the next question to consider is who should be your Trustee? This is not a decision that you should take lightly, as you are selecting someone to be responsible for managing your assets while you are alive, in the event of your incapacity, and after your death. Let's consider your options.

YOU: The closest I will come to making an absolute statement is that you should be your own Trustee during your lifetime if: 1) you want to and 2) you are able to. You accumulated what you have. So as long as you are still healthy and want to manage your assets, you are the logical choice.

But whom should you choose if you don't want to be bothered with managing your assets or if your health fails? Again, "It depends." People commonly look to individuals like their spouse, children, business associates, or a bank trust department or trust company (also called a "Corporate trustee").

Choosing an Individual Trustee

When selecting an individual to serve as your Trustee or Successor Trustee, the following should be considered:

- Does the person have any special training or expertise?
- Are they actually interested in serving?
- Are they comfortable with the potential liability of a Successor Trustee to other Trust Beneficiaries for mismanagement of the Trust?
- Is the individual susceptible to drug, alcohol, creditor problems, or perhaps undue influence from the individual's spouse, i.e., that son-in-law or daughter-in-law that you never liked anyway?
- Is there anything else that may adversely impact that individual's performance as Trustee? Remember that the Successor Trustee's decisions can impact not only your Beneficiaries; but, also you in the event of your incapacity.

Keeping these considerations in mind, whom should you pick? There are some different options. Each has its own list of possible issues to think about.

- **YOUR SPOUSE:** Keep in mind that there may be adverse tax consequences of having your spouse as Trustee. You should also consider whether there is a potential for conflicts with children if your spouse refuses to make discretionary

distributions to them. Are there any other factors that you feel relevant concerning the handling of your assets?

- **YOUR CHILDREN:** As with your spouse, there may also be potential adverse tax consequences of having your children as Trustee. Will there be family discord if you pick one child to serve as Successor Trustee to the exclusion of your other children? If your spouse is still alive and is a Beneficiary of the Trust, do you foresee any problems in giving one or more of your children control over your spouse's money?
- **BUSINESS ASSOCIATES OR ADVISORS:** Are there are any personality conflicts that you reasonably foresee arising between any of the Trust Beneficiaries and the Successor Trustee?

You may decide that you are not comfortable with an individual Trustee. In that case, you may consider a Corporate Trustee.

Choosing a Corporate Trustee

There are advantages and disadvantages of using a Corporate Trustee as Successor Trustee. The disadvantages are that they charge a fee (although it is not exorbitant and it is income tax deductible), they are relatively conservative in their investments (this may be bad or good depending upon your perspective), and some people feel that they are cold and impersonal in dealing with Beneficiaries.

The advantages of choosing a Corporate Trustee are: they don't die, become alcoholics, or get sick; they provide professional investment advice; decisions with regard to Trust investments and distributions from the Trust are made by a committee and not a single individual; Trust assets are not part of the bank's general assets and are separately maintained; there is less chance of adverse tax consequences occurring with the use of a Corporate Trustee instead of an individual Trustee who is also a Trust Beneficiary; the Corporate Trustee can be who the Trust Beneficiaries are mad at and who they can sue rather than another family member who might be serving as Trustee. In addition to commercial bank trust departments, some larger brokerage firms and accounting firms have established separate trust companies to offer Trust services.

Summary

Who you choose to be the Trustee or the Successor Trustee of your Revocable Trust is a matter requiring careful consideration. As a general rule, you are the logical choice to be the original Trustee of your own Revocable Trust. After your incapacity or death, whether you should select an individual as Successor Trustee or a Corporate Trustee as Successor Trustee will depend upon your personal situation.

DURABLE POWERS OF ATTORNEY FOR FINANCIAL MATTERS IN MISSOURI

In Missouri, an ***Attorney in Fact*** (the person granted a Power of Attorney) may conduct almost any type of financial transaction on behalf of his ***Principal*** (the person granting the Power of Attorney). The Principal may choose to make the Power of Attorney effective as soon as it is signed or it can be a "Springing Power" which only becomes effective upon the happening of a future event, e.g. the Principal is no longer able to make financial decisions for himself. A Durable Power of Attorney terminates when it is revoked by the Principal or when the Principal dies. At that point, the Attorney in Fact has no further authority to act.

Each state has its own statutes with regard to Powers of Attorney, and there is some variation in these laws from state to state. For example, Missouri law requires that certain language be included in the Power of Attorney in order for it to be a Durable Power of Attorney. If the specific language is not in the Power of Attorney to make it durable, it then becomes invalid upon the incapacity of the Principal. That is not typically what the Principal wanted or intended.

In Missouri, statues provide that you can give an Attorney in Fact the power to do anything that the Principal could do (with four exclusions), but in Missouri there are certain actions that in order to give the Attorney in Fact the authority to take those actions, those actions must be specifically enumerated in the Power of Attorney. Specific power must be granted in the Power of Attorney to allow the Attorney in Fact to make a gift for the Principal, to disclaim a gift coming to a Principal, to nominate a Conservator for the Principal, to amend a Trust created by a Principal, just to name a few.

In selecting an Attorney in Fact, I usually recommend that the Principal go through the same analysis as is used in selecting a Successor Trustee for the Principal's Trust if the Principal also has a Trust. Normally, the Principal will select the same people in the same order to make financial decisions for Trusts, Powers of Attorney, and their Wills.

When used together with transfers under the Missouri Nonprobate Transfers Law, a Durable Power of Attorney may eliminate appointing a Conservator if a person becomes incompetent, as well as the need to probate assets at the time of the person's death. These relatively inexpensive legal tools work in tandem to accomplish common estate planning goals.

LIVING WILLS AND HEALTH CARE POWERS OF ATTORNEY

Missouri has separate statutes dealing with Living Wills (Advance Health Care Directives) and Durable Powers of Attorney for Health Care. I often describe the two documents to clients by saying the Living Will is like writing a letter to your doctor telling him what you do or don't want done in certain medical situations. The Durable Power of Attorney for Health Care is a legal document in which you appoint someone to make medical decisions for you if you are not able to do so yourself. The Living Will and the Durable Power of Attorney for Health Care work hand in hand to insure that you receive the medical treatment you want (within the limits of Missouri law) if you are terminally ill or in a persistent vegetative state.

There are various choices in the Living Will and Durable Power of Attorney for Health Care statutes and Missouri case law that the person signing them should consider, such as:

- Do the directions apply only to a terminal illness, or does it also apply to a person in a persistent vegetative state, i.e., "brain dead?"

- Even if you are terminally ill or "brain dead," do you want artificially supplied fluids and nutrition withheld or withdrawn?

- Do you want the Durable Power of Attorney for Health Care to be effective upon one doctor certifying that you are incapacitated, or do you want to require certification by two doctors?

These two documents are incredibly important because they actually deal with the choice

between life and death. You should sign them only after carefully considering their consequences. It is also helpful to communicate your wishes in advance with your family, friends, doctors, and/or lawyer. Doing so may help prevent hard feelings among your survivors after your passing.

You need to give careful consideration to who you select as your health care Attorney in Fact, just as you should give careful consideration as to who will be the Successor Trustee of your Trust or your financial Attorney in Fact. Frequently, the people you want to make financial decisions for you may not be the same people in the same order as you want to make health care decisions for you if you are not able to make them yourself.

NURSING HOME EXPENSES

How do you pay the high cost of care for people who can no longer care for themselves? One option is Medicaid, which is a government program that pays the cost of nursing home care when the person requires it and can't afford it. In Missouri, a person must have less than $2,000.00 in assets to qualify for Medicaid benefits for nursing home care. The following assets are **exempt** from the calculation:

- Your primary residence and surrounding land;
- One vehicle
- Household furnishings and personal effects;
- Irrevocable prepaid burial plan.

It is important to know that there are special rules that apply when determining Medicaid eligibility that are intended to prevent the non-institutionalized spouse from becoming impoverished while seeking nursing care for his spouse.

WHAT ARE MY OPTIONS?

1. Stay healthy until your death.
2. Accumulate enough money so that you can afford the expense.
3. Purchase insurance to pay for the cost of a nursing home stay.
4. Give away your assets.
5. Hide your assets so that you will qualify for Medicaid assistance with nursing home costs.

Answer 5 is obviously NOT the correct answer! This is how people get prosecuted for Medicaid fraud.

Answer number 1 is the best answer; but, we don't have control over how long we live or how healthy we will be.

Answer number 2 is good; but, not everyone accomplishes this goal.

Answer number 3 is a very good solution provided you are insurable and it is not too expensive. It is best to explore this alternative while you are relatively young and you are still in reasonably good health. When you talk with your insurance advisor, ask what the maximum benefit is and whether there are conditions you need to meet before you qualify for the benefits.

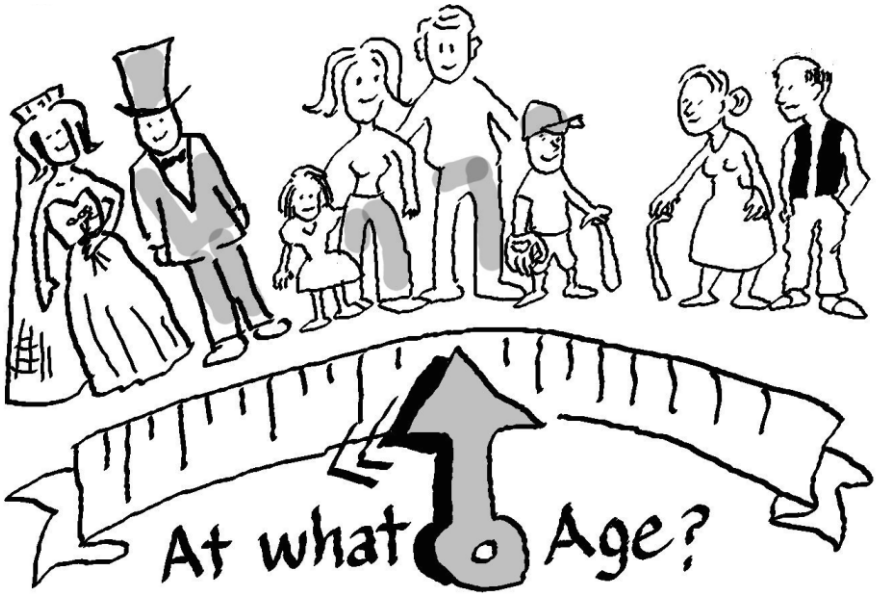
Answer number 4 is a possibility. There are important things to consider. First, once you give the asset away it is gone. Second, a person may be disqualified from receiving the Medicaid benefits if the nursing home stay begins within sixty months of the transfer

of the asset by gift.

As with many other issues in the estate planning process, the best decision is entirely dependent upon a person's unique circumstances. Even if you have not planned in advance for nursing home expenses, you still have options such as upgrading and improving your personal residence, replacing an older vehicle, paying off existing debts, purchasing necessary items for either spouse, or purchasing exempt assets.

This is an area you should discuss with an attorney specializing in estate planning, especially if you are uninsurable or if the cost of insurance is beyond your current financial means.

CASE STUDIES:



In the previous sections, we have discussed various aspects of estate planning, both during life and after death. This section will suggest how you might use the various estate planning devices we have discussed to accomplish a variety of objectives. To do this we will use various factual situations and suggest what alternatives may be used to accomplish the people's objectives.

SITUATION #1: Bill and Sue Young have three children, ages 2, 5, and 8. Both Bill and Sue work outside the home. Their assets include: a home (with a big mortgage on it), two cars (owing money on one of them), a savings and checking account, and each has life insurance through their employers.

The first consideration for Bill and Sue is to provide for managing assets in the event of incapacity of either of them. Each of them can sign a Durable General Power of Attorney giving the other the power to act.

Assuming all of their property is jointly owned, there will be no probate in the event of the death of just one of them. In the event of the death of both, a probate will be required, but the costs will be minimal because the bulk of their estate is life insurance.

One option they may wish to consider is establishing a Trust in their Wills in the event both of them die. All their assets could be held for the benefit of all the children until the youngest one reaches a specified age, or until a specified event occurs, e.g., until the children are no longer in school. The life insurance proceeds could be paid directly to the Trust set up in the Will. This would avoid probate and protect the insurance proceeds

from the Young's creditors, thereby ensuring that the maximum amount of assets could be used for the benefit of the children.

SITUATION #2: Jim and Sally Middle have three adult daughters. They have no debts and own their home. They also have other property and investments. They want to have full control of their assets during their lifetimes, with their children to share equally in their assets after both are deceased. If any of their children die before Jim and Sally, they want that child's share to pass to her children.

Again, they may wish to sign Durable general Powers of Attorney giving each other the power to act on behalf of the other. They may also want to consider naming one or more of the children to act on their behalf under the Power of Attorney in the event both of them are incapacitated.

If all of Jim and Sally's assets are jointly owned, they will pass to the surviving spouse outside of probate. Upon the death of the surviving spouse, however, the major cost in transferring assets to their descendants will be probate expenses.

The simplest and cheapest way for them to avoid probate fees is to use nonprobate transfers and other similar provisions of Missouri law to pass these assets to their lineal descendants after Jim and Sally are dead. However, the cheapest may not always be the best. The better option would be a joint Revocable Trust. That Trust could provide that in the event of the death of any of their three children, before the survivor of the two of them, the share for the deceased child's children would be held in trust for the grandchildren until they reached a specified age. They should also have "pour-over" Wills. These wills are created to cover any assets owned outside of the Trust without a nonprobate transfer designation.

SITUATION #3: Ralph and Jane Old are just that. They have lived full lives and they are in poor health. They have been married to each other for several years; however, they each have children from previous marriages. They have commingled their assets over the years, and although they have quite a large estate, it is still less than the amount that would require payment of any federal estate tax. Their objective is to insure that they are taken care of during their lifetimes. They want all their children share equally in whatever is left after they are both dead.

They may choose to establish one Revocable Trust for the benefit of both of them. The Trust may provide that upon the incapacity or death of either of them it becomes irrevocable and cannot be changed. As long as either of them is alive, the Trust is to be used exclusively for their benefit. They may also make special requests or provisions for

home care instead of being placed in a nursing home.

Ralph and Jane should also have "pour-over" Wills.

They should also consider the use of a Durable general Power of Attorney to deal with any assets owned outside of the Trust during their lifetimes. However, they should consider using some combination of their children to exercise the authority under the Power of Attorney because both Ralph and Jane are in poor health and neither of them may be able to make business judgments or decisions for much longer.

SUMMARY: The scenarios above illustrate that every client's situation is unique. To construct a quality estate plan, I consider factors such as: marital instability, in-law problems, health factors, tax problems, alcohol and drug problems, and/or multiple marriages. Estate planning is affected by many factors and each client's situation is unique. No matter the circumstance, I advise that each of my clients consider a Living Will (advance health care directive) and a Durable Power of Attorney for Health Care so there is someone in charge of making the life and death decisions, and the client has given the medical care providers and his Attorney in Fact some direction as to what he wants done if he is terminally ill or in a persistent vegetative state.

FREQUENTLY ASKED QUESTIONS

Q. What happens to property I own by myself if I die without a Will?
A. If you haven't made a Will, your assets will be distributed pursuant to the State of Missouri's intestacy statutes. Basically, the law automatically leaves your property to your nearest relatives; but, that may not be what you want.

Q. Martha and I are going to get married. We each have children from a prior marriage. Is there anything we should do to be sure that her children receive her money and my children receive my money?
A. You should consult a lawyer about what is called a Prenuptial Agreement. If done properly, this will insure that each set of children will receive what Martha and you want. It can also have some other benefits and result in less fighting in the event you and Martha get a divorce instead of living happily ever after.

Q. One of my children and I have not spoken to each other in 20 years. My friend told me that I have to leave him at least $1.00. Is that true?
A. Any intestate heir can contest a Will or Trust, regardless of whether you leave them $1.00 or not. However, no one except your surviving spouse has a right to any part of your estate under Missouri law. Children have no rights to your assets after you die. You do not have to leave them anything if you don't want to do so. There are provisions that you can put in your Will or Trust to discourage an intestate heir from contesting your Will or Trust.

Q. My husband and I have two young children. If we both die, we want the children to live with my sister. She is willing to do this. How do we make sure this happens?
A. You should appoint your sister to be the guardian of your children in your Wills. Ultimately, the probate court decides what is in the best interests of the children. However, if you give the court directions in your Will, it will certainly be guided by your desires unless there has been a drastic change in your sister's circumstances.

Q. Can I write out in my own handwriting where I want my property to go after my death, have it notarized, and save the expense of going to a lawyer?
A. Better hire a lawyer. Missouri does not recognize holographic Wills (Wills in the person's own handwriting, even if it is notarized) as some states do. In all likelihood, the Will is not valid that you do this way.

Q. How much does it cost to have a Will done for my husband and me?
A. It depends on how long it will take to do the work and the complexity of your particular situation. At our initial meeting, we would discuss your estate planning objectives. At that point, I can estimate a price range on what the price of having the work done will be. Most lawyers who do estate planning work do not charge for the

initial consultation unless the client decides to hire the lawyer. In other words, it should not cost you anything to go in to talk and get a general idea of what your options are. Then if you don't hire the lawyer there is no charge. That is the policy I follow in my office.

Q. I don't want to pay a lawyer because they are too expensive. Besides, I don't feel like I'm going to die anytime soon.
A. Last objection first: none of us know when we are going to die. First objection: If you want to insure that you are taken care of and protected during your lifetime and that your property goes where you want after your death, you can't afford not to talk to a lawyer.

Q. I'm very bright. How about I order one of those books I see advertised online and skip the lawyer by doing my own estate plan?
A. You may be very intelligent. You likely have not been to law school for three years after college, nor have you spent more than forty years of your professional life specializing in estate planning work. Sure, you can consult a book or the Internet to self-diagnose various diseases; but, you would likely consult an actual physician to treat cancer, pneumonia, or a broken leg. Similarly, lawyers may try to do their own plumbing and electrical work; but, usually it costs more to repair the "repair" than if the plumber or electrician had been called first. Some things are best left to the experts.

Q. Are state laws pretty much the same concerning Wills and Trusts, Powers of Attorney, and similar matters?
A. No. Although there are some similarities, the laws of each state are different. There is no federal law that preempts the state's authority to pass laws concerning these matters.

Q. Do I need to change my Will or Trust if I move from one state to another?
A. Maybe and maybe not. I suggest that you consult a lawyer in the new state to see if there is anything peculiar to the laws of that state that could interfere with your estate plan. You may not have to completely re-do your estate plan, as it could be as simple as making a few minor revisions to the language of your existing estate planning documents.

Q. Are all lawyers pretty much the same when it comes to doing Will or Trust work?
A. No. The legal profession has gotten more complicated, just as everything else in the world has. No matter what you are consulting a lawyer about, I would suggest asking whether the lawyer has handled other similar cases, and if so how many. It is critical that you feel comfortable about the lawyer you select to work on your behalf.

Q. Do I have to have to hire the lawyer who wrote my mother's Will or Trust to handle her Probate Estate or Trust after my mother passes?
A. No. You can select any lawyer you wish to assist you in handling your mother's

Estate or Trust, provided the lawyer is licensed to practice in the State of Missouri. In fact, it is really the choice of the person named as Personal Representative (Executor or Administrator) in the Will or the Successor Trustee of the Trust to choose the lawyer. In case there is no Will, the person who is appointed by the Court to serve as Personal Representative has the right to hire the lawyer for the Estate.

CONFIDENTIAL ESTATE PLANNING QUESTIONNAIRE
(FOR USE OF ATTORNEY OF THE PARTIES LISTED BELOW)

HUSBAND'S (H) NAME:_____

WIFE'S (W) NAME:_____

NAMES AND AGES OF LIVING CHILDREN (IF ANY):_____

_____

DECEASED CHILDREN (IF ANY):_____

ADDRESS OF H & W:_____

PHONE NUMBERS OF H & W:_____

EMAIL ADDRESSES OF H & W:_____

SOCIAL SECURITY NUMBERS OF H & W:_____

DATES OF BIRTH OF H & W:_____

EITHER H or W MARRIED PREVIOUSLY?_____

IF SO, NAME OF AND AGE OF CHILDREN BY PRIOR MARRIAGE:_____

_____

AT DEATH OF BOTH H & W, MINOR CHILDREN TO LIVE WITH:_____

_____

DO YOU WANT YOUR SURVIVING SPOUSE TO HAVE CONTROL OF ALL THE PROPERTY YOU PRESENTLY OWN?_____

ARE BOTH H & W CITIZENS OF THE U.S.A.?_____

AFTER H & W BOTH ARE DECEASED, WHO DO YOU WANT TO RECEIVE YOUR PROPERTY? THINK ABOUT WHAT YOU WANT TO HAPPEN IF ANY OF YOUR NAMED BENEFICIARIES DIE BEFORE THE SURVIVOR OF BOTH H & W:

_____

_____

_____

IF H OR W IS INCAPACITATED, WHO DOES THAT PERSON WANT TO MAKE DECISIONS FOR HIM OR HER WITH REGARD TO:

- HEALTH CARE DECISIONS?_____

- FINANCIAL DECISIONS?_____

IN THE EVENT H OR W BECOMES TERMINALLY ILL, WITH NO CHANCE OF RECOVERY, WOULD YOU WANT TO BE KEPT ALIVE INDEFINITELY WITH ALL AVAILABLE MEDICAL MEANS?

- H WISHES:_____
- W WISHES_____

ANY OTHER SPECIAL FACTORS TO BE CONSIDERED BY ATTORNEY (CHILDREN WITH HEALTH OR FINANCIAL PROBLEMS, CHARITABLE BEQUESTS, ETC.):

_____

_____

GENERAL FINANCIAL INFORMATION (INCLUDES ALL PROPERTY OWNED JOINTLY OR INDIVIDUALLY BY H OR W):

TOTAL VALUE OF REAL ESTATE:_____

TOTAL VALUE OF STOCKS AND BONDS:_____

TOTAL VALUE OF BANK ACCOUNTS:_____

TOTAL VALUE OF LIFE INSURANCE:_____

TOTAL VALUE OF RETIREMENT PLANS:_____

TOTAL VALUE OF ALL OTHER ASSETS:_____

TOTAL OF OUTSTANDING LOANS OWED TO OTHERS:_____

ANY REAL ESTATE OWNED OUTSIDE THE STATE OF MISSOURI?_____