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ESTATE PLANNING TOOLS EXPLAINED

By Elizabeth Morrison Dean, June 29, 2023

A good estate planning attorney will be able to simplify the passing of a loved one and sometimes allow them to avoid the hassle and cost of probate. Here is some advice and tools we use in our Estate Planning and which are included in our Estate Planning Package, as needed:

Will: The will is the standard document in most estate plans. The will names an executor, or personal representative, to administer the distribution of your assets as you intend. Your will can also appoint guardians of minor children who will oversee their custody and care until they become adults.

Personal Property Memorandum: Although not a valid will, this document directs your executor on how to distribute your tangible personal property items such as furniture, jewelry, artwork and other things not specifically addressed in the will. This can be changed over time.

Statutory Durable Power of Attorney (Financial): This document appoints a trusted family member, friend, or advisor as an agent to act on your behalf for financial and legal matters while you are alive. Typically, these are effective immediately, so if you become incapacitated by some event such as a car accident, illness, stroke, or heart attack, someone is available to make financial decisions on your behalf. However, because this is effective immediately, the named party can act even if you are not incapacitated. You could even direct them to act for you. This is a powerful, but an important, tool to have in place, because once you become incapacitated, you cannot execute this power of attorney.

Medical Power of Attorney and HIPPA Release: This document appoints someone you trust (agent) to make medical decisions for you when you no longer can. This power becomes effective only up your incapacitation. Also, the HIPPA release gives the agent authority to discuss your medical care with your healthcare team and has access to your medical records.

Directive to Physicians (also called a “Living Will”): This is an in-hospital directive that directs the physician on your “end-of-life” care wishes, rather than leaving them up to

the agent named in your Medical Power of Attorney or the doctor. This document covers the situation when you have a terminal or irreversible condition and are unable to communicate your wishes, allowing you to choose to die comfortably or use life-sustaining treatment, such as a ventilator, feeding tube, or resuscitation.

Out-of-Hospital Do-Not-Resuscitate Order (OOH-DNR): This is an out-of-hospital directive that directs paramedics or other healthcare professionals on whether to withhold or withdraw life-sustaining treatments in the event of a respiratory or cardiac arrest. Examples of out-of-hospital settings include long-term care facility, in-patient hospice facility, private home, hospital outpatient, emergency department, physician's office, and vehicles during transport. The prohibited life-sustaining treatments include: CPR, transcutaneous cardiac pacing (electrical impulse from pads applied to chest), defibrillation (electrical shock to chest), airway management (tube inserted down the throat for the worker to breathe for the patient), artificial ventilation (mask and bag used to force air into the patient's lungs).

Survivorship Agreement for Community Property: By default, community property does not include survivorship rights. On the death of one spouse, his or her interest in the property passes to his or her estate instead of directly to the surviving spouse, which includes children from a prior marriage. Therefore, this is a very important tool to use when blended families are involved. Married couples can change this result by filing a Survivorship Agreement document in the deed records. We highly recommend this or a Transfer on Death Deed so the surviving spouse receives ownership of the home when the other spouse passes away.

Revocable Transfer on Death Deed: This document is used by married individuals with adult children, married individuals owning separate property, or unmarried individuals who own real property. This deed transfers real estate to someone else after you die without going through the probate process. Your ownership rights are not affected while you are alive. This deed stays with the property and does not transfer to a newly purchased home, so a new Transfer on Death Deed would need to be filed on any new real property acquired.

Appointment for Disposition of Remains: This document details your intentions for how you would like your bodily remains to be handled upon your death, as well as any funeral arrangements. This document is legally binding and names your agent who will carry out your wishes regarding any cemetery organization, cremation plans, desired funeral director or embalmer, and the funeral establishment. Without this document, Texas law has a list of who has the right to control disposition and are liable for the interment costs. This document is especially helpful for unmarried individuals.

Survivorship Agreement or Motor Vehicle Transfer Forms: If you own any motor vehicles, regardless of whose name is on the title, I can provide forms that will automatically transfer any motor vehicles to your spouse or other beneficiary outside of probate. If married, I recommend titling every vehicle in both spouses' names and signing

the survivorship form on the back of the title, so the surviving spouse will obtain legal title upon the first spouse to die without a great deal of trouble.

Declaration of Guardian: This form indicates your preference to the court regarding who you would like to serve as your guardian in the unfortunate situation that you become incapacitated at some point in the future and require a Guardianship.

Appointment of Guardian for Children: This form designates a guardian for your minor children upon the last surviving parent's death or incapacity. Although we include this designation in your Will, your Will only applies upon your death. If you become incapacitated and cannot take care of your children, this form provides your preference to a judge who will be asked to appoint a guardian.

Designation of Health Care Agent for Children: This form designates an agent to make health care decisions for your minor children if you/their parent is unavailable.

Beneficiary Designations: You should designate beneficiaries on all financial accounts, such as life insurance, bank accounts (pay on death or survivorship), IRAs, investment accounts, etc. This will ensure these accounts pass upon your death outside of probate.

***Living or Revocable Trust:** A revocable trust holds and provides management of your assets for your benefit while you are alive and names the people who will receive the property when you die. These trusts can also help with planning for incapacity, to keep out-of-state property from going through probate, or for tax planning purposes when the estate is worth over \$11m. Otherwise, trusts are not needed in Texas like they are in other states.

*Not included in the Estate Planning Package but can be added for an additional fee.