



BOUSQUET HOLSTEIN PLLC

Estate Planning Basics

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Estate Planning - Purpose

- **Plan for Asset Distribution at Death**
 - ✓ Implement your intentions
 - ✓ Meet the needs of your beneficiaries
 - ✓ NEEDS TO BE COMPLETE!
- **2 Fundamental Questions**
 - ✓ Who should receive my assets?
 - ✓ What is the best mechanism?



Will vs Estate Plan





How Assets Pass at Death

Individual Assets

- Titled in YOUR name alone
- Become part of your estate

Joint Assets

(with rights of survivorship)

- Titled jointly with YOU and another person
- Become property of surviving owner

Beneficiary Assets

- Designation on file with asset provider
- Beneficiary is entitled to claim assets





Estate Planning – Keys to Success

- **Complete Information**



- **Fundamental Questions – tackle sequentially**
 - ✓ Big Picture
 - ✓ Mechanics



Essential Documents

- **2 Categories of Documents**
 - 1. After Death Documents**
 - Direct Distribution to heirs/beneficiaries
 - 2. Before Death Documents**
 - Delegate authority while you are still alive



After Death Documents

Distribution of Assets After Death

- **Last Will and Testament**
- **Beneficiary Designation Forms**
 - ✓ Retirement Accounts
 - ✓ Life Insurance
- **Appointment of Burial Agent Form**



Before Death Documents

- 1. Durable Power of Attorney**
 - Financial / Real Estate Decisions
- 2. Health Care Proxy (with HIPAA release)**
 - Health Decisions
- 3. Living Will**
 - Statement of your wishes
- 4. Burial Agent Designation**
 - Public Health Law § 4201
- 5. Designation of Standby Guardian**
 - SCPA § 1726



Individual Assets

- Assets are “frozen” until someone has authority to distribute:
 - Person(s) authorized under your Will
(Executor(s)) - **Probate**
 - Person(s) authorized by New York State Law -
Administration



Last Will and Testament

- Your opportunity to **direct distribution**
- You name person to carry out the plan - **Executor**
- You can make **special provisions** for beneficiaries (testamentary trust)
- You can name a **guardian** for minor children



Default Rules

- New York Law of Intestate Succession
 - To Spouse and children
 - No spouse, all to children
 - No children, all to spouse
 - Parents, siblings, nieces and nephews, etc.
- Generally NOT desirable when minors are involved
 - Parent must be appointed as “Guardian of Property”
 - Court supervision / discretion
 - Assets turned over at age 18



Probate

- **Court process (“Surrogate’s Court”)**
- **Gives Executor the authority to act**
- **Steps:**
 - Fill out petition (and other paperwork)
 - Submit original Will and Death Certificate
 - Notify family
 - Pay a filing fee (\$45 - \$1,250)
- **Fears about probate** – some are legitimate, most are not



Revocable Trusts

- **What is a Revocable Trust?**
 - A revocable trust is an agreement established by a “settlor” that acts as the settlor’s “alter ego.”
 - The settlor can amend, alter or revoke the agreement
 - The Settlor can act as sole Trustee of the trust
 - Donor is in full control of the trust and assets held by the trust
- **Do you need a Will if I have a Revocable Trust? YES!**
- **When to use a Revocable Trust:**
 - If you own real estate in a foreign jurisdiction
 - Privacy
 - To avoid probate



Medicaid Planning

- **Medicaid Programs**
 - Community Based
 - Institutional – Nursing Home Care
- **Medicaid eligibility for nursing home care based on individual and spousal resources**
- **Establishing an Irrevocable Trust to become eligible for Medicaid or protect against recovery by Medicaid**
 - Irrevocable transfer
 - No access to principal
 - Will have access to income
 - Will be able to reside in any property owned by trust



Other Considerations

Who should I tell about my Planning?

- Executor
- Beneficiaries
- Give them copies or tell them where to find documents

When is an Update Necessary?

- Review your plan every 5-10 years
- Divorce or big family change
- Substantial change in assets
- Death of a beneficiary or fiduciary



Estate Planning Tools for Decision Making

- **Durable Power of Attorney**
 - You choose who helps you
 - Power of agent may be broad or limited
- **Guardianship**
 - The court chooses for you
 - Power of guardian is generally broad



Durable Power of Attorney

- Your opportunity to name someone to assist you with financial and real estate decisions
- You can choose additional language to allow your agent to make gifts to themselves or others of your assets
- You can grant very specific authority or very broad but always choose someone you trust



Agent's Duties Under Power of Attorney

- Act in your **best interest**
- **Avoid** conflicts of interest
- Keep your property **separate and distinct** from other property controlled by the agent
- **NO gifts are allowed** to the Agent without a gifting power
- **Keep record** of receipts and transactions



Effective June 13, 2021

- New statutory Power of Attorney enacted by New York State
- Shortened form
- A validly executed Power of Attorney prior to June 13 will be grandfathered and enforceable



Guardianships

- **Article 81 of Mental Hygiene Law**
 - For the guardianship of an incapacitated adult who is unable to look after themselves or manage their property
- **Article 17 of the Surrogate's Court Procedure Act**
 - For the guardianship of a minor child
- **Article 17-A of the Surrogate's Court Procedure Act**
 - For the guardianship of individuals who are intellectually disabled or developmentally disabled





Article 81 Guardianship

- Judge appoints court evaluator and there is a hearing
 - The evaluator is the eyes and ears of the court
- Very individualized and specific
 - Guardian may make certain decisions and incapacitated person may still make some
 - OR
 - Guardian may also make all decisions and incapacitated person may make none
- Guardian of Person and Guardian of Property
 - May be named both, or just one





Remember

- An agent under Power of Attorney is someone you choose to assist you when you have capacity and if you are later incapacitated.
 - While you have capacity, you may remove them
- A guardian is a person appointed by a court who has the legal right to make decisions for you.
 - The court has the authority to end a guardianship or change guardians



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Questions?

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