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FIVE REASONS WHY YOU SHOULD DO YOUR ESTATE PLAN

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Pausing to reflect and consider a world without you – or a world with an impaired version of you – is not easy. It is also not easy for your loved ones. Implementing an estate plan is like handing a roadmap of your wishes to your friends and family when you are unable to speak for yourself. The goal is to eliminate uncertainty and negate potential disputes.

Here are five reasons why you need an estate plan:

1. CARE AND MANAGEMENT IN THE EVENT OF INCAPACITY

While you are cognitively intact, you can choose the individuals to make financial and medical decisions on your behalf in the event of your incapacity. There are typically two documents – one to appoint an individual to make financial decisions for you and another to appoint an individual to make medical decisions for you. The powers you delegate to your agents in these documents end upon your death.

Power of Attorney. In your Power of Attorney (POA), you delegate the power to make financial decisions on your behalf to one or more agent(s). You should only select agents who are trustworthy and financially responsible. Commonly, clients will name family members or friends to serve as agents. If your finances and needs are complex, you should consider naming an agent who possesses the necessary financial sophistication to effectively manage your financial affairs. However, trust is paramount to expert financial acumen, as an agent can hire an investment advisor or financial professional to provide the skills the agent may be lacking. Though every state's laws offer a generic list of financial powers that can be delegated to an agent, the powers you delegate can be customized to best serve your future needs.

There are two types of powers of attorney – durable or springing. A durable power of attorney is effective as soon as it is signed. A springing power of attorney becomes effective only upon your incapacity. While the intention is typically to use the power of attorney in the event of incapacity, springing powers of attorney tend to be difficult to administer. This is because the agent needs to present a financial institution with the power of attorney as well as with proof of incapacity (often through a written opinion from your physician) – you can see why this might be awkward and impractical. Accordingly, durable powers of attorney, with certain safeguards, tend to be more common.

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Health Care Directive. In your Health Care Directive, you name a health care agent, representative or proxy to make medical decisions on your behalf in the event of your incapacity. You should choose someone who knows you well and who is likely to honor your wishes by making similar decisions for you as you would for yourself. Often these directives contain a living will, which sets forth your intentions for end-of-life decisions if you are terminally ill or permanently unconscious.

2. ENSURING YOUR WISHES ARE HONORED

If you do not have your own estate plan, your state of domicile has a plan for you. Each state has intestacy laws which dictate who receives what in the event of your death. These laws are not customized for your unique situation; your legislators considered only what most people or a "typical" person may desire when enacting such laws.

Having your own, customized estate plan will supersede these generic intestacy laws. You select the flow of assets upon your demise and the fiduciaries you trust to manage your affairs. This includes naming someone to facilitate the administration of your estate upon your demise, known as an executor or personal representative. Like your agent under the POA, you should name someone you trust, and if your estate is complex, you should consider naming an executor who possesses the necessary skills to effectively manage your estate. Your executor can also retain counsel to assist and advise throughout the estate administration process. Expenses for professional services, such as legal fees and appraisal fees, are typically borne by the estate.

Your plan ought to be well-crafted, clear and unambiguous. Poorly drafted, unclear or ambiguous estate planning documents can lead to litigation over your estate, as different parties seek the interpretation most favorable to them when you are no longer alive to offer clarification.

3. PROTECTING YOUR BENEFICIARIES

There are powerful planning tools to protect beneficiaries, whether they are young children, cognitively impaired, physically impaired, lack money management skills, work in a highly litigious profession, and more. A personalized trust for such beneficiaries can protect them by dictating how they should inherit the assets and how those assets are used for their benefit. During your lifetime, you can appoint someone who will manage the assets in the beneficiary's best interest, known as a trustee, and someone to care for any minor child you may have at your death, known as a guardian.

Here are some common ways clients seek to protect their loved ones:

- Parents of young children are often interested in delaying their children's control over their inheritance until they become financially responsible and mature adults. For example, a trust for a minor child could allow the trustee to make distributions for the child's education, health, maintenance and support, and only distribute the remaining trust assets to the child at a certain age or in a staggered approach over multiple ages.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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- Trusts that last for a child's lifetime can protect the assets from a child's creditor, including a divorcing spouse. This is especially important for beneficiaries with high-risk professions, such as surgeons or sole proprietors, or beneficiaries without prenuptial agreements.
- Furthermore, assets left in a trust for a child's lifetime may avoid taxation in your child's estate at his or her death.
- Beneficiaries with special needs may benefit from inheriting assets in a trust that will not disqualify them for valuable public benefits.

A thoughtfully designed plan can transform an inheritance from a one-time, lump-sum distribution at risk of being squandered or taken by creditors to a legacy that will last for a lifetime and beyond.

4. PROBATE AVOIDANCE

The probate process serves the essential role of ensuring a decedent's assets are collected, accounted for and distributed to the estate's beneficiaries. Through careful attention to your estate plan, you may be able to cause some, or all, of your assets to bypass probate, meaning the assets would be distributed to your beneficiaries without going through the probate process. Two common ways of minimizing probate are (i) to create and fund a revocable trust and (ii) to name beneficiaries to automatically receive certain assets on death. Assets in a decedent's sole name and without a beneficiary designation will go through probate.

5. PRIVACY

Proper planning can offer privacy during your lifetime and after your death. If you are alive and unable to manage your affairs, but do not have a valid POA and health care directive, the probate court could become involved by appointing someone in charge of making financial and/or healthcare decisions on your behalf, known as a conservator. A conservator is an agent of the court who remains under the court's jurisdiction and often must seek the court's approval prior to making certain decisions. For instance, a husband appointed as conservator would need to obtain a court's approval prior to liquidating his wife's retirement account. If the same husband is named as agent under the wife's POA, he would not require any involvement or approval from a court.

It may come as a surprise to you that your will, and a list of assets disposed of through your will, may become part of public record after your death. Any curious party can seek and obtain this information. Implementing a thoughtful estate plan can greatly reduce, or even eliminate, the likelihood for unwanted disclosure through the use of a revocable trust, an irrevocable trust, or a business entity.

Reassured. Empowered. Prepared. These are some of the sentiments you may experience after completing or updating your estate plan. The process may seem daunting as it forces you to face your own mortality and the mortality of your loved ones. Maybe there will be some tears and tough decisions – but not regret!