



# THE FAMILY ESTATE PLAN

WHY YOU SHOULD HAVE ONE AND WHAT HAPPENS IF YOU DON'T

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# GOALS OF ESTATE PLANNING

EFFECTIVELY TRANSFER YOUR ASSETS  
(Real Property and Personal Property)  
TO ACCOMPLISH YOUR OBJECTIVES

- Give what I have to whom I want, the way I want, when I want
- Manage the risks of incapacity
- Delegate health care decisions
- Provide for the need of a surviving spouse (if applicable)
- Provide liquidity at death (i.e., placing insurance proceeds into a trust)
- Fulfill your charitable intentions (eliminates tax burden)
- Promote family harmony (if applicable)
- Plan for children, including children with special needs
- Protect assets from creditors for generations to come

# THE MODERN ESTATE PLAN INCLUDES:

- A Revocable Living Trust (Any asset can be placed in a trust)  
(cash, 401k, IRA, real estate, life insurance, etc.)
- Pour Over Will
- Financial Power of Attorney
- Advance Health Care Directive (Medical Power of Attorney)
- Living Will
- HIPAA Authorization

# BASIC ESTATE PLAN

(Which document is needed in the event of:

## MANAGES INCAPACITY

### **Financial Power of Attorney**

Allows your agent to manage assets outside the trust during incapacity

### **Advanced Health Care Directive**

Allows your agent to make medical decisions for you if you are unable to on your own

### **HIPAA Authorization**

Allows your designated fiduciary to talk with your medical providers and obtain your medical records

## MANAGES DEATH

### **Pour-Over Will**

(Pours any assets left outside of the trust at death into the trust after probate)

Has the ability to appoint guardians for minor children

## MANAGES BOTH

### **Revocable Living Trust**

(A Contract between the Grantor (you) and a Trustee (Someone you trust to manage your assets) upon your incapacity or death to provide for a third-party (Beneficiary)

# WHY YOU NEED A BASIC ESTATE PLAN

- ▶ **Avoid Probate** (costly court proceedings that conclude all the legal and financial matters of the deceased)
- ▶ **Avoid Court Interference in Personal Affairs** (This includes: court proceedings during life that may be needed to name a guardian/conservator or transfer property)
- ▶ **Reduce Taxes** (including estate, gift, income and in some states property and inheritance taxes (MD has a 10% inheritance tax. Does not apply to lineal descendants)
- ▶ **Asset Protection** (guard assets that are transferred to children from their creditors, spouses, etc.)

# WHY JUST HAVING A WILL IS NOT GOOD ENOUGH

- ▶ A WILL DOES NOT AVOID PROBATE PROCEEDINGS! It must be probated

Probate is a public process (Having a Trust can avoid this)

Usually Requires hiring an attorney (not always)

Takes a long time (depending upon value of the estate)

Very expensive

Wills only take effect at death (does not provide for testator's incapacity)

Wills only provide direction and protection for a short time (does not manage the lives of the surviving spouse, children and grandchildren)

\*\*\*\* (Wills can be appropriate when the estate is small) Cost is usually minimal

# Creating Generational Wealth Through Estate Planning

- ▶ Self-Insurance
  - ▶ Brokerage Accounts
  - ▶ Retirement Accounts
  - ▶ Alternative Investments (Real Estate, Art, Ownership Interest, etc.)
- ▶ Outsourcing the Risk
  - ▶ Employer-Owned Life Insurance
  - ▶ Personally-Owned Life Insurance
    - ▶ Term Insurance
    - ▶ Permanent Life Insurance



# WHAT ARE THE RISK OF HAVING NO ESTATE PLAN

- ▶ **INTESTATE:** (When you die without a will or trust) or to die without a will or trust that does not dispose of all of your property
  - Surviving spouse with no children may have to share with in-laws
  - Surviving spouse with children may get the same share as a child or maybe none.
  - All children will be treated equally, even though the children's needs may be different
  - A bond may be required
  - The Court will appoint a guardian for the children



# INTESTATE SUCCESSION IN MARYLAND

(When the State decides who gets your assets)

Only assets that would have passed through your will are affected by Maryland's intestate succession laws.

This does not include:

Property that you transferred to a living trust

Life insurance proceeds

Funds in IRA, 401 (k) or other retirement account

Property you own with someone else in joint tenancy or tenancy by the entirety

These assets will pass by beneficiary designation or to surviving co-owner

## WHO GETS WHAT WHEN THERE IS NO WILL IN MARYLAND

- ▶ **If the Decedent has children but no spouse:**
- ▶ Children inherit everything. [Md. Code, Estates and Trusts § 3-103](#)
- ▶ **If the Decedent has spouse but no living parents or children:**
- ▶ Spouse inherits everything. [Md. Code, Estates and Trusts, § 3-102\(f\)](#)
- ▶ **If the Decedent has spouse and children who are minors (under 18):**
- ▶ Spouse inherits ½ of intestate property; **and**
- ▶ Children inherit everything else. [Md. Code, Estates and Trusts, § 3-102\(b\)](#)
- ▶ **If the Decedent has spouse and descendants, but no minor children:**
- ▶ Spouse inherits first \$40,000 of intestate property and ½ of the rest; **and**
- ▶ Descendants inherit everything else. [Md. Code, Estates and Trusts, § 3-102\(c\)](#)
- ▶ **If the Decedent has spouse and living parents but no descendants:**
- ▶ If the spouse and the decedent have been married for less than 5 years
  - ▶ Spouse inherits first \$40,000 and ½ of the rest; **and**
  - ▶ Parents inherit everything else.
- ▶ If the spouse and the decedent have been married for at least 5 years, then spouse inherits everything. [Md. Code, Estates and Trusts, § 3-102\(d\)](#)
- ▶ **If the Decedent has parents but no spouse or descendants:**
- ▶ Parents inherit everything. [Md. Code, Estates and Trusts, § 3-104](#)
- ▶ **If the Decedent has siblings, but no spouse, descendants, or parents:**
- ▶ Siblings inherit everything. [Md. Code, Estates and Trusts, § 3-104](#)

# WHO GETS WHAT WHEN YOU HAVE CHILDREN BUT NO WILL

- ▶ Children will receive an “intestate share” of your property. The size of each share depends on how many children you have and whether or not you are married.

They include: Adopted children (not children placed for adoption)

Foster children and stepchildren: Foster children and stepchildren do not receive an automatic share. They must be legally adopted. Some exceptions.

Posthumous children (Children conceived but not born before your death)

Children born outside of the marriage (if paternity is established)

Grandchildren (receive a share only if your child (their parent) has died before you.)

# WHEN SHOULD YOU PLAN

- ▶ When first child is born
- ▶ When children reach the age of majority and can serve as decision makers (In Maryland – the age of majority is 18)
- ▶ Grandchildren are born
- ▶ Parents are aging and have a more definite plan regarding when and how they want their property to pass
- ▶ When a parent has served as a personal representative
- ▶ When a friend, family member or loved one passes away suddenly

# Common misconceptions about having a plan (Why people don't plan)

- ▶ Cost
- ▶ Time
- ▶ Estate Planning is a luxury not a necessity
- ▶ “I don't want to think about it”
- ▶ “It won't happen to me”
- ▶ I will do it myself
- ▶ I don't like attorneys
- ▶ What does it matter – “I will be dead”