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Estate Planning | Wills & Trusts

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The People Named in Your Estate Planning Documents

One of the most important features of your estate plan is to give individuals of your choice the power to make decisions for the benefit of yourself and your loved ones if or when you are unable to do so. The alternative to such planning is to allow the courts to decide who will make decisions for you and your family—a process which can be costly and time consuming.

This newsletter focuses on the agents that will be appointed in your estate planning documents and issues to consider when choosing the individuals to fill those positions.

Guardian for Minor Children

A Guardian is named by a parent in a Will to look after a child's well-being if both parents pass away during the child's minority (age 18 in Illinois). When a Will and Revocable Living Trust work together and the assets for the benefit of the child are left in trust, the trustee of the child's trust will manage and distribute the trust assets for the benefit of the child. A trust also allows the parent to determine an age beyond 18 when the assets will be distributed to the child. In such cases, the Guardian's primary responsibility is to look after the well-being of the minor child and any assets of the child outside of the trust.

A named Guardian may be an individual or couple. The creator of the Will may also impose conditions on the guardianship, such as "Bill and Mary, so long as they are married to each other." Issues to consider in selecting a Guardian for your minor children include (a) geographic location, (b) whether the individual is willing and able to raise your children, (c) whether your children get along with any children the individual already has and (d) whether you would want the individual to serve even if his or her financial, geographic or social status changed.

Executor

The Executor of a person's estate is named in that person's Will and is primarily responsible for administering the decedent's estate as provided in the Will. Generally, the creator's spouse (if applicable) is named as the first Executor. It is preferable to name an individual Executor followed by successors rather than naming co-Executors in order to ensure that the estate is administered as efficiently as possible. An Executor may also be an individual or a corporate fiduciary (a bank or trust company).

When a Will and Revocable Living Trust work together, the Executor's primary responsibility is to ensure that any assets that the decedent left outside of his or her trust get transferred to the trust to be administered and distributed by the Trustee as provided in the trust document. This is done by opening the probate estate (if necessary) and closing the estate when all assets have been transferred to the trust.

Trustee

The Trustee, named in the trust document, is responsible for managing and distributing the trust assets as provided in the terms of the document. Generally, the creator (Grantor) of a Revocable Living Trust will be the Trustee during his or her life. Successor Trustees should be individuals that you trust to manage trust assets, make distributions for the benefit of trust beneficiaries and work closely with accountants and attorneys. Like an Executor, a Trustee may also be a financial institution, which may be especially beneficial in certain scenarios.

Although serving as Trustee can be a significant responsibility, it is generally recommended that individual Trustees, rather than co-Trustees, be named. The trustee can always seek the counsel of an attorney, accountant or other advisor to assist in trust administration.

Health Care Agent

A Health Care Power of Attorney is generally effective immediately and appoints an agent to make decisions regarding your health care in case you are unable to do so for yourself. The document also reflects your decisions regarding organ donation and life-sustaining treatment. An Illinois Health Care Power should incorporate provisions of the Health Insurance Portability and Accountability Act that allow your agent to access your medical history.

Property Agent

A Property Power of Attorney is generally effective either immediately or upon the finding of incapacity by your physician and appoints an agent to make

decisions regarding your assets. Though the document is structured by state law, there are several decisions to be made when executing a Property Power of Attorney, including the powers that are granted to your agent, how incapacity will be determined and the succession of agents. By properly incorporating powers related to your Revocable Living Trust and gifting techniques, the Property Power of Attorney can be an invaluable tool to serve your needs in case of your incapacity.

It is important to understand the responsibilities of each of these positions before determining who should be named to act. Appointing the right individual or institution to serve can significantly reduce the cost and hassle of estate administration.



Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Trust and Estate Administration and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish has served as Vice President of Professional Development for the Indian American Bar Association and board member of the Young Professionals of Evanston.

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