

Estate Planning

November 10, 2015

St. Mary's Cathedral

Three components that should be included in your estate plan:

1. Trust and/or Will
2. Durable Power of Attorney for Finances
3. Advance Health Care Directive

Trust and/or Will

Both documents provide you with the opportunity to direct where your assets will go after you die.

If the total value of assets held in your name alone are in excess of \$150,000, you may consider preparing a trust.

The main purpose of having a trust is to avoid the need to file for probate after your death.

Probate is a court-supervised proceeding that can be costly and time-consuming.

On the other hand, sometimes a probate proceeding will provide more protection for your beneficiaries, and it is sometimes easier for your executor to deal with financial institutions than your successor trustee.

Some assets are not included in determining the \$150,000 valuation, and will not be included in either your Will or your Trust.

A true pension usually ends at death, so there are no assets to pass on.

Other retirement accounts, such as IRA's, Annuities & 401ks, as well as life insurance, usually have named beneficiaries. If the designated beneficiaries are still in existence at your death, they will receive the proceeds from these accounts directly from the institutions. An exception is if you have named your "estate" as the beneficiary – then those assets are vulnerable to probate.

Another exception is payable on death accounts (POD or TOD). If the named beneficiaries are in existence, the institution will pay the beneficiaries directly.

Finally, assets held in joint tenancy are not included in your will or trust. If you survive the joint tenant, immediately on death, the surviving joint tenant will take title to your portion of the asset by operation of law. It is important to distinguish between joint tenancy and tenancy in common.

Tangible personal property: One item that is often overlooked, is the distribution of your things – cars, religious items, books, clothing, jewelry, works of art. You may include directions in either the Will or Trust about these items. Or you can refer to a separate list of instructions. The clearer you are, the less likely there will be disputes after you die.

You should have an integrated plan, to make sure that your wishes will not inadvertently be thwarted.

Durable Power of Attorney

Gives you an opportunity to name someone you trust to access your accounts and make financial decisions for you if you become incapacitated.

Avoids the need for a conservatorship.

Must be careful who you name as your agent – you are giving them a lot of power, which they may abuse.

Terminates at death.

Advance Health Care Directive

Allows you to name someone to speak on your behalf to the doctors if you are not able to do so.

It also allows you to state now what your wishes are about being put on life support, autopsy, organ donation, etc.

Mary Schembri has experience with these documents.

All of the above documents should be reviewed periodically.