



Amaral & Associates, P. C.

ATTORNEYS AT LAW

Estate Planning Demystified

What is a Last Will and Testament

- Wills are probably the best known and most common estate planning document.
- A Last Will and Testament provides for who you wish to inherit your property when you pass away.
- It is not uncommon for your spouse and/or children to be the primary or sole beneficiary, but this is not required.
- A Will nominates a Personal Representative (formally known as an Executor) to carry out the last wishes.
- A Will can also nominate a guardian to care for minor children after you pass away.
- If someone dies without a will, they are considered to die “intestate”, which then requires the Probate and Family Court to administer the decedent’s estate in accordance with the laws of inheritance.

What is a Trust?

- Trusts are more complex than Wills.
- Trusts are a means by which property can be owned or conveyed for beneficiaries, and simultaneously avoid the probate process.
- The trust property is managed by a trustee for the benefit of the named beneficiaries

There are advantages and disadvantages to trusts, and trusts are not always the best option for everyone.

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What is a Living Will?

- A Living Will states a person's preferences for end of life care and treatment.
- Through a Living Will, a person can state whether or not he/she wants any extraordinary life sustaining measures, or if he/she wants only palliative care provided while the person is allowed to die with dignity.
- Under existing Massachusetts law, a Living Will is not a legally binding document. However, when there is a dispute as to your wishes for end of life care, the document can be considered as evidence of your wishes for this type of medical care.

What is a Health Care Proxy?

- In this document, you appoint someone you trust to make medical decisions for you when you are unable to make medical decisions for yourself (such as when you are unconscious or in a coma).
- This can be a very helpful document for medical providers if there is a sudden accident requiring quick medical decisions

It is not uncommon for this person to be your spouse or child(ren), but you choose whoever you wish to serve as your health care proxy.

What is a Power of Attorney?

- A Power of Attorney permits someone you trust to conduct your personal business affairs (such as banking, paying your every day bills, filing taxes, and so on), which you would otherwise handle yourself, but are unable to do so due to being incapacitated as a result of an illness, injury, or accident.
- A Durable Power of Attorney permits another person to conduct your personal business affairs when you are unable to do so due to being incapacitated as a result of an illness, injury, or accident.
- If you do not have a Durable Power of Attorney appointing someone to conduct your personal business affairs, then in the event you are unable to conduct your own personal business affairs, someone will have to seek appointment as a conservator by the court to conduct these affairs on your behalf.

- A conservatorship requires a legal action to be commenced in the Probate and Family Court, which would be formal litigation. This is a time consuming and costly process, and in the case of personal business affairs, some things usually need to be tended to right away. If there is no Durable Power of Attorney, then you must wait for the order appointing a conservator, which can take several weeks. Having a Durable Power of Attorney avoids this problem in advance.

Non-Probate Assets

- Non-probate assets are assets that are **not** controlled by your will.
- This typically includes assets that have beneficiary designations such as life insurance, retirement accounts, and other assets.
- You need to ensure your beneficiary designations are up-to-date, as your Last Will and Testament will not dictate who inherits these assets.

Have any further questions about estate planning?

Call the attorneys at Amaral & Associates, P.C.