

PLANNING FOR YOUR FUTURE: WHAT IS AN ESTATE PLAN & WHY YOU NEED ONE

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IN THIS PRESENTATION...

We will explain:



What is Estate Planning?



How do I make an Estate Plan?



The Estate Planning process.

WHAT IS ESTATE PLANNING?

Planning for Disability

- › Powers of Attorney
- › Advance Medical Directives
- › Guardianship

Planning for Death

- › Last Will and Testament
- › Revocable Trust
- › Beneficiary Designations & Titling



PLANNING FOR DISABILITY



Who can make legal & financial decisions for a disabled person?

- › Guardian of the property and/or person
- › Agent under an Advance Medical Directive
- › Attorney-in-fact under a Power of Attorney
- › *No one else is automatically authorized. Not a spouse, not an adult child.*

PLANNING FOR DISABILITY

- Designate the people you want – not who the court dictates – to manage your affairs if you are disabled
- Avoid expensive and intrusive court-supervised guardianship
- Minimize uncertainty and family stress

GUARDIANSHIP

- Can only happen after a person becomes disabled
- Requires attorneys, court filings, hearings, physician certifications, continued court supervision, annual accounting(s), fees, and expenses.
- Can avoid through properly prepared Advance Medical Directives and Powers of Attorney

WEBERMAN

JUST SO YOU KNOW...



I NEVER WANT TO LIVE IN A VEGETATIVE STATE, DEPENDENT ON SOME MACHINE..



IF THAT EVER HAPPENS, JUST UNPLUG ME, OK?

OK.



ADVANCE MEDICAL DIRECTIVE

ADVANCE MEDICAL DIRECTIVE

- Authorizes a trusted individual to make **health care** decisions for the "**Declarant**" when they cannot make them for themselves
- Expresses wishes regarding **end-of-life care**, removing the burden from your agent
- Authorizes an individual to make **funeral arrangements**
- Avoids guardianship of the person

ADVANCE MEDICAL DIRECTIVE

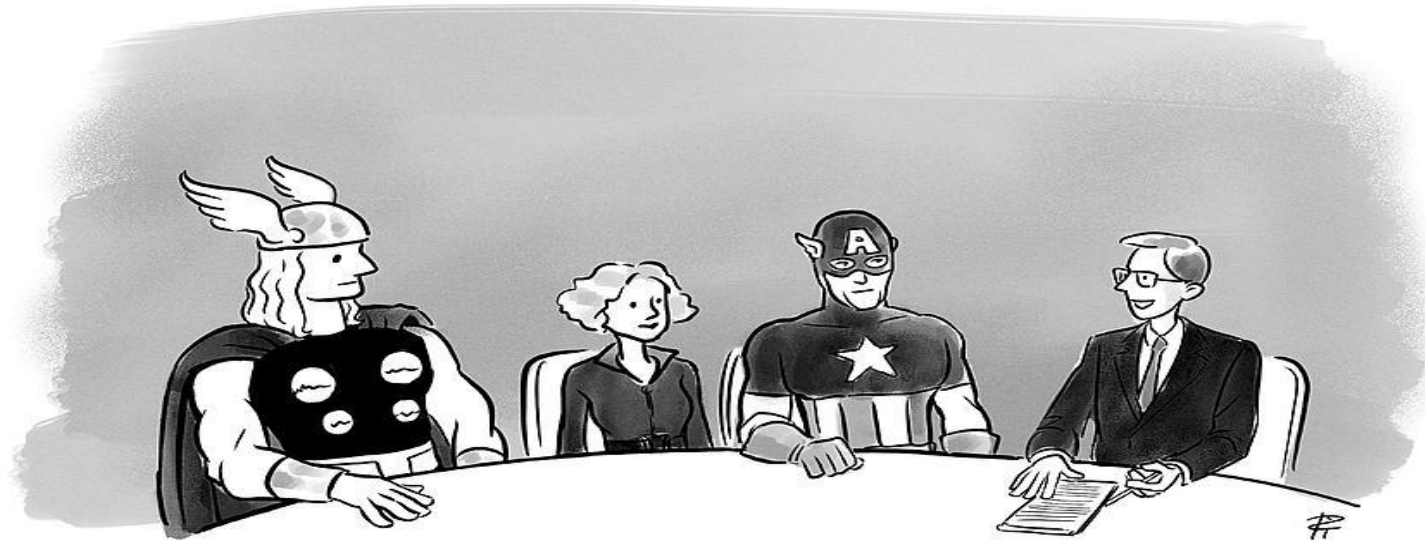
Part A – provides administrative powers to your healthcare agent

Part B – gives instruction to your healthcare agent when at end of life (terminal condition, end-stage condition, or persistent vegetative state)

Part C – clarifies wishes regarding organ donation, disposition of the bodily remains, and memorial arrangements

MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT (MOLST)

- Physician prepared version of the Advance Medical Directive (must be signed by doctor, nurse practitioner, or physician's assistant)
- Portable and enduring medical order form covering options for cardiopulmonary resuscitation (CPR) and other life-sustaining treatments
- Should match the Advance Medical Directive (Advance Medical Directive takes priority)



*“Well, I was bitten by a radioactive lawyer and ended up with
the power of attorney.”*

POWER OF ATTORNEY

POWER OF ATTORNEY

- Legal document that authorizes a trusted individual to make legal and financial decisions for the "Principal"
- “Agent” under the Maryland Statutory Power of Attorney Act, also called an “attorney-in-fact”
- When done correctly, avoids expensive and intrusive guardianship proceedings, supervision and mandated accountings

WHO DOES WHAT?

Agent under Advance Medical Directive	"Attorney-in-fact" under Powers of Attorney
Make medical decisions for the Declarant	Make financial decisions for the Principal
Access the Declarant's medical information	Access the Principal's financial information
Utilize the Declarant's wishes under Part B of the Advance Medical Directive in making health care decisions on behalf of the Declarant	May step into the Principal's "shoes" and do anything they may do (open an account, close an account, deplete funds, enter a contract, etc.)

PLANNING FOR DEATH

- Provide for your spouse, family, loved ones, and/or charities
- Direct that property passes to the people you want, not the defaults under the law
- Safeguard your assets from the mismanagement/creditors of your beneficiaries
- Optimize for taxes
- Minimize administrative expenses and headaches

HOW DOES PROPERTY PASS AT DEATH?

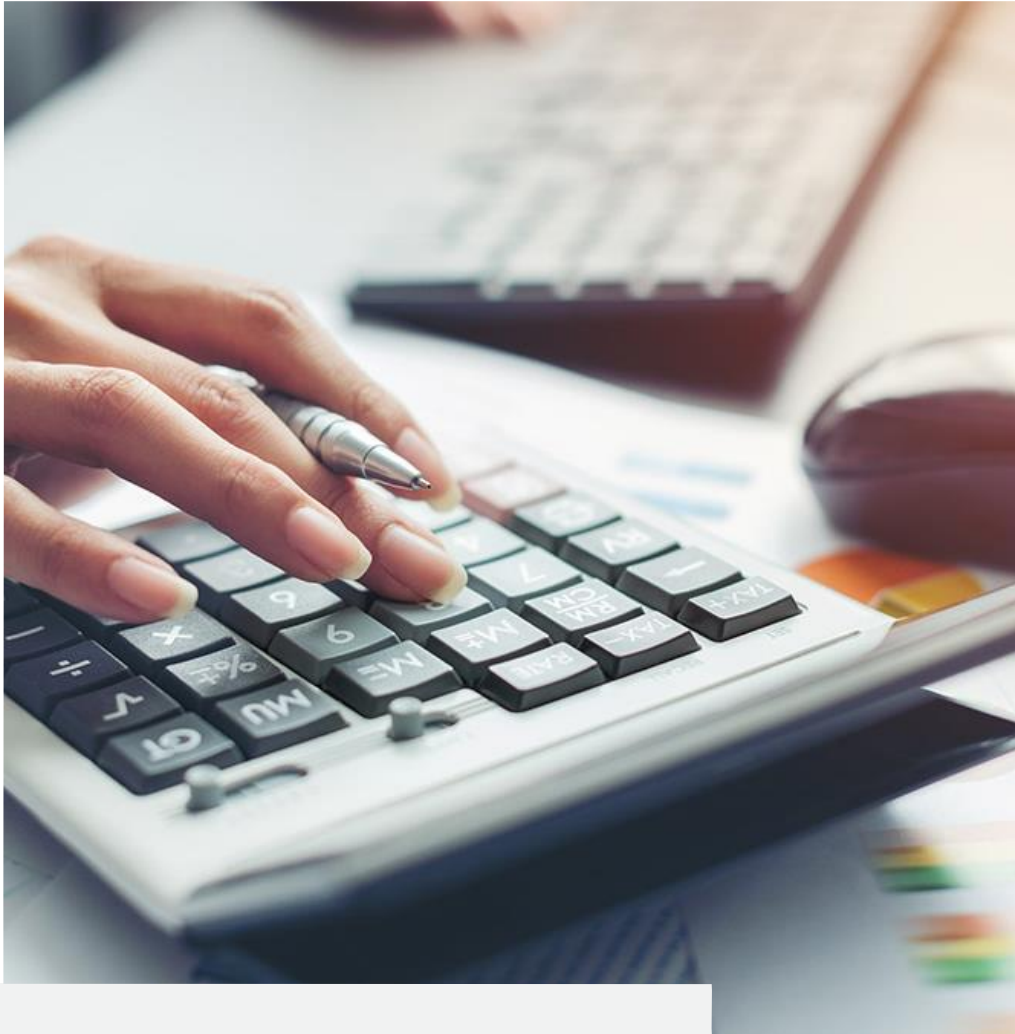
Two basic categories of property:

› Non-probate – Outside of the Will

- Jointly titled property
 - Joint tenants with the right of survivorship
 - Tenants by the entirety (spouses only)
- Contract property and certain death benefits
 - Life insurance, retirement accounts, and annuities
 - Payable or transfer on death account (bank and brokerage accounts)
 - Return of the entrance deposit at a continuing care retirement community
- Property owned in a trust

› Probate – Via the Will or Intestacy

- Essentially, everything else
- All property owned individually
- Titled as “tenants in common” with another
- Property subject to probate administration



WHAT IS A WILL, AND WHY DO YOU NEED ONE?

WHAT GOES INTO A WILL?

Important administrative provisions regarding funeral expenses, taxes, etc.

Directs what happens to probate assets at your death

Can establish trusts for beneficiaries – special needs, spouses, minors

Names your fiduciaries (decision-makers):

- Personal Representatives (Executors)
- Guardians for minor children
- Trustees



SPECIAL CONSIDERATION FOR A WILL

- Does your beneficiary have special needs, receive a means-tested benefit?
- Do you have concerns about a child or other beneficiary receiving their inheritance outright?
- Is there an asset you want to go to a specific individual?
- Do you want to avoid the possibility of in-laws or creditors inheriting your property?
- Is your family a "blended" family, meaning you and your spouse have children from a prior marriage?
- All these items must be addressed within a Will (or Trust)

WHAT IF YOU DON'T HAVE A WILL?

➤ **If no Will, a person dies “intestate”**

- Maryland was kind enough to write your will for you
- You lose control of disposition and fiduciaries
- Can add cost, time, and expense

PROBATE

➤ Probate – Assets passing under a Will or by Intestacy

- The legal process to determine the validity of the Will, appoint the Personal Representative, and supervise the passing of assets based on the instructions in the Will
- Supervised by the Register of Wills and/or Court
- Something Maryland does well! All things considered...

AVOIDING PROBATE - REVOCABLE TRUSTS

➤ What is a Revocable Trust?

- Will substitute and management tool to hold assets
- A tool for probate avoidance
- No income or estate tax savings/benefit

➤ When are they useful?

- Privacy
- Disability imminent
- Real estate in multiple jurisdictions or closely-held business interests
- Save on probate fees for large estates

AVOIDING PROBATE

JOINT TITLING/BENEFICIARY DESIGNATIONS

› Joint Titling

- Having someone else's name on an account avoids probate **BUT** it can have unintended consequences
- Common for spouses, especially in a first marriage
- Should be done in consultation with an attorney who understands your estate plan

› Beneficiary Designations

- Necessary on retirement accounts and life insurance
- Should be part of the plan with the Will or Revocable Trust
- Can be used on other assets, too – but be careful!

HOW DO I MAKE AN ESTATE PLAN?

I can just write one myself, right?



LEGAL REQUIREMENTS FOR A WILL

➤ For a non “holographic” (i.e., in your handwriting) Will, the legal requirements are:

(a) Any person may make a will if the person is 18 years of age or older, and legally competent to make a will.

(b) Except as provided in §§ 4-103 and 4-104 of this subtitle and subsection (f) of this section, every will shall be:

(1) In writing;

(2) Signed by the testator, or by some other person for the testator, in the testator’s physical presence and by the testator’s express direction; and

(3) Attested and signed by two or more credible witnesses in:

(i) The physical presence of the testator; or

(ii) The electronic presence of the testator, provided that an electronic will or remotely witnessed will satisfies the requirements under subsection (c) or (d) of this section.

Md. Estates and Trusts Code Ann. § 4-102

POWER OF ATTORNEY AND ADVANCE MEDICAL DIRECTIVE

- POA forms are in the Maryland Code
- The Attorney General publishes a sample Advance Medical Directive
- These are the starting place for everyone – even Maryland attorneys. However, an attorney will provide guidance and will often supplement the statutory forms based on experience.

SO HOW DO I MAKE AN ESTATE PLAN?

The options:



DIY



Online Forms



An Estate
Planning Attorney

YE Lawyers who live upon litigants' fees,
And who need a good many to live at your ease ;
Grave or gay, wise or witty, whate'er your degree,
Plain stuff or Queen's Counsel, take counsel of me.
When a festive occasion your spirit unbends,
You should never forget the Profession's best friends ;
So we'll send round the wine and a bright bumper fill
To the jolly Testator who makes his own Will.

He premises his wish and his purpose to save
All disputes among friends when he's laid in the grave ;
Then he straightway proceeds more disputes to create
Than a long summer's day would give time to relate.
He writes and erases, he blunders and blots,
He produces such puzzles and Gordian knots,
That a lawyer, intending to frame the deed *ill*,
Couldn't match the Testator who makes his own Will.

DIY & ONLINE FORMS

An option, but they can have unintended consequences...

Sometimes, worse than nothing!

- › The life insurance that did not pass under the Will...
- › What is the Fiduciary Access to Digital Assets Act?
- › But... didn't you give that way already?

AN ESTATE PLANNING ATTORNEY

I know this seems self-serving, but hear me out...

A good estate planning attorney will have:

- › Up to date forms that account for changes in the law
- › The ability to customize documents to your specific circumstances (and to know what those customizations *actually* mean)
- › Malpractice insurance





WHAT TO EXPECT WITH AN ESTATE PLANNING ATTORNEY*

*FROM MY EXPERIENCES & TALKING WITH MY COLLEAGUES

THE PROCESS

From beginning to end



- Some attorneys do free consults, some charge
- Attorneys often request information prior to meeting (intake form)

- Flat fee vs. hourly
- Should be open and transparent
- Engagement letter
- Will vary based on experience/firm

- Attorneys often provide drafts in advance
- Attorney should always give the opportunity to review together & answer questions

- The easy part!
- Where are documents stored?

- Beneficiary designations & titling
- Future follow up – how often?

HOW LONG SHOULD THIS TAKE?

Depends on your situation, your ability to make decisions, and your attorney.

Attorneys can often work on an accelerated timeline in emergency situations, but that can add to cost.

Our typical turnaround is a month or two, but not uncommon in some practices to take 6 months or more. Ask your attorney!

HOW TO FIND AN ESTATE PLANNING ATTORNEY

- cwalter@darslaw.com
- Referrals from trusted friends and family, advisors
- Online reviews from trusted sources
- Look for experience & specialization

RED FLAGS

- › One size fits all – everyone gets a trust!
- › Not transparent on price (after they understand your situation)
- › Non-responsive to your questions
- › Doesn't take the time to explain
- › Doesn't specialize – this is a complex area of law
- › Won't do the follow-up
- › Trust your gut – are you comfortable?



CONTACT US

Let us know how we can help you



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