

Asset Protection Law Newsletter



FROM MARK A. ROSEMAN, ESQ.
WELLS FARGO BANK BUILDING
3325 HOLLYWOOD BOULEVARD, SUITE 308
HOLLYWOOD, FLORIDA 33021-6926

HOLLYWOOD TELEPHONE (954) 963-8719 ♦ DADE TELEPHONE (305) 326-7400 ♦ WEBSITE: WWW.ROSEMAN-ELDER-LAW.COM

A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ JUNE 1, 2012 EDITION

THE FIVE COMPONENTS OF A GOOD ESTATE PLAN

Many people believe that if they have a will, their estate planning is complete, but there is much more to a solid estate plan. A good plan should be designed to avoid probate, save on estate taxes, protect assets if you need to move into a nursing home, and appoint someone to act for you if you become disabled.

All estate plans should include, at minimum, two important estate planning instruments: a durable power of attorney and a will. A trust can also be useful to avoid probate and to manage your estate both during your life and after you are gone. In addition, medical directives allow you to appoint someone to make medical decisions on your behalf.

Will

A will is a legally-binding statement directing who will receive your property at your death. If you do not have a will, the state will determine how your property is distributed. A will also appoints a legal representative (called an executor or a personal representative) to carry out your wishes. A will is especially important if you have minor children because it allows you to name a guardian for the children.

However, a will covers only probate property. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate and aren't covered under a will.

Trust

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a "trustee," holds legal title to property for another person, called a "beneficiary." Trusts have one set of beneficiaries during those beneficiaries' lives and another set -- often their children -- who begin to benefit only after the first group has died.

There are several different reasons for setting up a trust. The most common reason is to avoid probate. If you establish a revocable living trust that terminates when you die, any property in the trust passes immediately to the beneficiaries. This

can save time and money for the beneficiaries.

Certain trusts can also result in tax advantages both for the donor and the beneficiary. These could be "credit shelter" or "life insurance" trusts. Other trusts may be used to protect property from creditors or to help the donor qualify for Medicaid.

Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

Power of Attorney

A power of attorney allows a person you appoint -- your "attorney-in-fact" -- to act in your place for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian.

That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

Medical Directives

A medical directive may encompass a number of different documents, including a health care proxy, a durable power of attorney for health care, a living will, and medical instructions. The exact document or documents will depend on your state's laws and the choices you make.

Both a health care proxy and a durable power of attorney for health care designate someone you choose to make health care decisions for you if you are unable to do so yourself. A living will instructs your health care provider to withdraw life support if you are terminally ill or in a vegetative state.

A broader medical directive may include the terms of a living will, but will also provide instructions if you are in a less serious state of health, but are still unable to direct your health care yourself.

Beneficiary Designations

Although not necessarily a part of your estate plan, at the same time you create an estate plan, you should make sure your retirement plan beneficiary designations are up to date. If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan.

Some plans automatically distribute money to a spouse or children. Although others may leave it to the retirement plan holder's estate, this could have negative tax consequences. The only way to control where the money goes is to name a beneficiary.

Contact our office at (954) 963 - 8719 to make sure your estate plan is complete.

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WWW.ROSEMAN-ELDER-LAW.COM

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NEWS YOU CAN USE

2012 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,094.00
Personal Needs Allowance:	\$35.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$99.90
Community Spouse Resource Allowance:	113,640.00
Minimum Monthly Maintenance Income Allowance:	\$1,839.00
Maximum Monthly Maintenance Needs Allowance:	\$2,841.00