



A Professional Corporation

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BEGINNING THE ESTATE PLANNING PROCESS

This letter lists the basic items you should consider when thinking about your estate planning. Besides the usual thoughts on the disposition of your assets, you also need to consider what would happen in the event you were living but incompetent to handle your own affairs. Living wills, healthcare powers of appointment, and financial powers of attorney are the documents which handle that circumstance. The following list of items is broken into three general sections, the first is to consider people which must be named for various roles, the second is to consider the disposition of your assets, and the third are general related items to consider.

APPOINTMENTS:

In considering each of these appointments, please also consider alternates to your first choice in the event your first choice is unable to serve. You can name multiple people to act together in these roles, but we may need to consider what happens if they deadlock on an issue. The people you appoint must be over age 18, but do not have to be Indiana residents.

1. **Personal Representative/Executor.** Who would you want to be the personal representative/executor of your will? This is the person or entity in charge of paying final debts and taxes and distributing your estate as directed in your will. Most married people name their spouse for this role. Parents, siblings, trusted friends and banks are also common choices.

2. **Trusts and Trustees.** It is possible that you will leave assets for your spouse or heirs in a trust. Trusts are legally controlled by a trustee, who can be individuals or institutions. The trustee's job is to manage and invest the trust assets, distribute assets as directed by the trust document, and handle the business and tax reporting aspects of the trust. Siblings or other individuals you trust with good business sense can be good choices. One problem with choosing individuals is that they likely have no experience acting as trustees. Professional trustees such as banks or trust companies know how to act as trustee, but come with a cost and have generally not been doing a good job lately of taking a personal interest in your beneficiaries. One common solution has been to name a trusted individual to act as co-trustee with a professional trustee of their choice. This way you have the personal attention you are looking for from the individual,

but you have the professional management of the professional trustee. Remember these trusts may be in place for several decades, so ideally you should have trustees named who can be expected to survive the trust's term.

3. **Investment Advisor.** Some people like to appoint an investment advisor to work with the Trustee in investing the assets. This is because very often individual trustees don't have a lot of experience and professional trustees often have competing investment interests. This is especially important when you name an individual as trustee.

4. **Health Care Representative.** In the event you become incapacitated, who would you want to make any health care decisions on your behalf? Remember to consider alternates.

5. **Durable Power of Attorney.** In the event you become incapacitated, who would you want to make financial decisions on your behalf, including signing checks, having access to your bank accounts, etc.?

6. **Guardian.** Should something happen to you while you have minor children, the surviving parent will remain as the natural guardian of your minor children. But if the other parent cannot act as guardian, the court appointing the guardian will very strongly favor the person(s) named in your Will. Who should take care of your minor children if neither of the parents are able to do so? If you name a couple, does it matter if they are no longer married at the time the guardian is appointed? Most people prefer to leave their children to a couple and will name a second couple as alternates in case the first marriage does not survive. You can also make certain restrictions, such as "provided that Mary is willing to quit her job to care for the children", "provided they are under age 60", or "provided that they are willing to move into the school district the children are currently in".

DISTRIBUTION:

1. **Specific Gifts.** Do you wish to provide in your estate plan for cash gifts, or gifts of other specific property, to any individuals or charity? If so, you should make a list of such individuals and organizations, paying careful attention to exact given names, spellings and addresses. Should these specific gifts only be at the survivor's death, or should any of them occur upon the first death? Most couples pass all such assets to the survivor, but there are exceptions where the survivor would have no interest in the property.

2. **Distribution Upon First Death.** For a married couple, what should happen to your assets upon the first death? Many couples want everything to pass to the survivor, but there are circumstances where that is not the best solution. We often set up a trust for the surviving spouse at the first death. This is usually done for one of the following reasons: (A) estate savings for high net worth couples; (B) to ensure the assets don't pass to a future spouse; or (C) to protect the surviving spouse from losing the assets due to poor financial decisions, a con artist, or deteriorating mental capacity. Typically, a trust for the surviving spouse will pay its income to that spouse and allow them limited rights to the principal.

3. **Ultimate Distribution.** What will be the ultimate disposition of your assets to your heirs when both of you are deceased? Ideally, you will live to a ripe old age and pass the inheritance directly, but we need to plan for the early disaster. A very common method to pay out inheritance is to hold the assets in trust. The trust will take care of the beneficiary's needs (health, education, maintenance and support) and will be distributed to them in equal shares at certain ages (30, 35, and 40 are common). Often, people like to add reasons to allow the trustee to dip into the trust earlier - to purchase a first home, to pay for a wedding, to start a business, etc. We can put almost any term into these trusts as you wish. The idea behind the trusts is generally to protect a beneficiary from receiving an inheritance at too young an age, or too much at one time.

4. **Guardian Compensation.** If you need to appoint a guardian for minor children, do you want to provide any funds for that guardian? In theory, they will not be out of pocket any money because the trust set up for your children will pay the incremental costs of adding your children to their household. However, there is an obvious impact on their lives, and some people feel it is proper to provide something for the guardian. This could be an annual amount, which would be used in the case where you requested that one of the spouses stop working. It could be a one-time payment, or any other method you select. Remember to keep in mind your guardian's living situation once your children are added to their household. We sometimes allow an amount to be used to add to their house or assist them in moving to a more suitable home.

5. **Disaster.** If you and your heirs ever travel together, you need to consider what to do in the event of the ultimate disaster. If all of your named heirs are deceased, to which individuals or charities should your assets be given?

OTHER ITEMS:

1. **Living Will.** In the event you are in a terminal condition, with no hope of recovery, do you wish to be kept alive by artificial means? Would you want to receive nutrition (through a feeding tube) and hydration? If there is any question about your wishes, who do you want to speak on your behalf?

2. **Life Insurance.** Do you have sufficient life insurance to cover the death of one spouse, no matter what the order of death? People differ on the amounts necessary, but now is a good time to re-consider your life insurance. Conversely, are you paying for insurance which no longer serves a purpose?

3. **Disability Insurance.** Along the same lines, now is also a good time to review your disability insurance policies. Should you become disabled and unable to work, inside or outside the home, do your disability policies provide enough income that you can maintain your standard of living.

4. **Funeral and Burial Instructions.** Do your loved ones know your wishes with regard to your funeral and burial? There are numerous decisions to be made and people must make them at an emotional time. Any instruction you provide will ease this process. One of the most important decisions can be to determine who will be in charge of the process.

5. **Asset and Beneficiary Information.** Your estate plan can be derailed by the method assets are titled and how your beneficiary designations are made. Joint property and beneficiary designations trump what is written in the Will. If the life insurance beneficiary is the children, they will receive the money outright, even though you set up a trust for them so they do not get the money too soon. This is a good time to review how your assets are titled and how your life insurance, IRAs and other qualified plans are to pay out.

6. **Estate Taxes.** Estate taxes now affect very few people. Each person now has the right to pass \$11,700,000 of assets to others before the estate tax begins. If you have assets (including retirement plans and the face value of life insurance) which are approaching that amount, you should put together a rough balance sheet to determine if tax planning is necessary.

These are simply items for you to think about. Do not feel that you have to have all of the answers in place before you meet with an attorney. If you have given some thought to your basic wishes, it will make the process of talking through the details easier. If you have any questions or would like to schedule a meeting to discuss this further, please feel free to contact us.