INSIGHT ON ESTATE PLANNING

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ESTATE PLANNING PITFALL
You're hiding assets without telling anyone

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Executors and trustees

The name game

Have you chosen the executor of your estate? How about the trustee for trusts you intend to establish? It's important to select someone who's capable of handling these duties on your family's behalf.

In some cases, the executor of your estate and the trustee of your trusts will be the same person. In any event, it's vital to designate a successor to both of these positions. (See "Provide a stand-in for these roles" at right.)

Naming an executor

The executor (called a "personal representative" in some states) is the person named in a will to carry out the wishes of the deceased person. Typically, the executor shepherds the will through the probate process, takes steps to protect the assets of the estate, distributes property to beneficiaries according to the will, and pays the estate's debts and taxes.

Most assets must pass through probate before they can be distributed to beneficiaries. (Note, however, that assets transferred to a living trust are exempted from probate.) When the will is offered for probate, the executor will also obtain "letters testamentary" from the court, authorizing him or her to act on the estate's behalf.

It's the executor's responsibility to locate, manage and disburse the assets of the estate. In addition, he or she must determine the value of property, such as real estate, artwork and other collectibles. Depending on the finances, assets may have to be liquidated to pay debts of the estate.

Also, the executor can use estate funds to pay for funeral and burial expenses if no other arrangements have been made. The executor will obtain copies of the death certificate, which will be needed for several purposes, including closing financial accounts, canceling certain benefit payments and filing the final tax return.

Provide a stand-in for these roles

It's not enough to designate someone as executor or trustee. It's absolutely essential to designate a "successor" (or an "alternate") in the event that your top choice is unable or unwilling to fulfill the responsibilities.

For instance, an executor may decide that he or she doesn't have the time or expertise. Or a trustee may predecease you. What happens then?

Without a named successor, the probate court will appoint one for the estate. For a trustee, the trust will often outline procedures to follow. As a last resort, a court will appoint someone else to do the job.

Practical suggestion: Choose the "next best" person to step in. Make sure that he or she is on board with your decision. Similar to the discussion about naming a power of attorney, consider whether you should name a professional as a backup.

Finally, the executor must manage the estate's assets until they can be distributed. This often involves investment accounts.

So whom should you choose as the executor of your estate? Your first inclination may be to name a family member, like an adult child or a trusted friend. But this can cause complications.

For starters, the person may be too grief-stricken to function effectively. And, if the executor stands to gain from the will, there may be conflicts of interest — real or perceived — which can trigger contests of your will or other disputes by disgruntled family members. Furthermore, the executor may lack the financial acumen needed for this position.

Frequently, a professional advisor whom you know and trust is a good alternative. If this professional is already familiar with your financial affairs, even better.

Naming the trustee

The trustee is the person who has legal responsibility for administering the trust on behalf of the interested parties. Depending on the trust terms, this authority may be broad or limited.

Generally, trustees must meet fiduciary duties to the beneficiaries of the trust. They must manage the trust prudently and treat all beneficiaries fairly and impartially. This can be more difficult than it sounds because beneficiaries may have competing interests. For example, a spouse in a second marriage may be entitled to annual income while the children of the deceased's first marriage are entitled to the remainder. The trustee must balance out their needs when making investment decisions.

In some instances, the trustee is granted the discretion to distribute or withhold the distribution of trust funds. For example, this discretionary power may be intended to protect assets from the beneficiary's creditors or safeguard

funds until the beneficiary reaches a certain age. The trustee in such a discretionary trust should be sympathetic to the intent of the trust and legitimate needs of the beneficiary.

The decision about naming a trustee is similar to the dilemma of choosing an executor. The responsibilities require great attention to detail, financial acumen and dedication. Because of the heavy reliance on investment expertise, choosing a professional over a family member or friend is generally recommended. At the very least, make it clear to the trustee that he or she may — and should — rely on professionals as appropriate.

Other key considerations

An executor can renounce the right to this position by filing a written declaration with the probate court. Along the same lines, a designated trustee may decline to accept the position or subsequently resign if permission is allowed by the trust or permitted by a court. This further accentuates the need to name backups for these important positions.

If you still haven't made up your mind, discuss the issues with your estate planning team, including the attorney who drafted your will. •

What are the benefits of a durable power of attorney?

No one likes to think about being incapacitated, but the threat is quite real. According to recent statistics, in the United States, about one out of every 10 people age 65 or older are affected by Alzheimer's disease, while roughly one-third of the adult population has at least one of the leading risk factors for stroke. Don't think that you're immune.

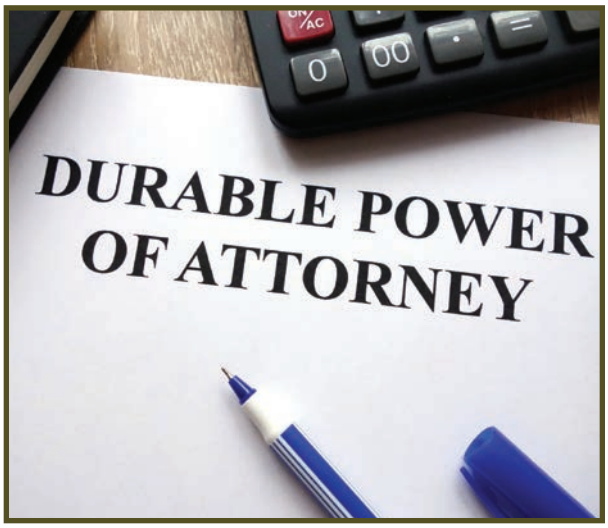
This raises some troubling thoughts about how your personal and financial affairs will be handled in the event you're incapacitated. If you haven't already done so, address the possibility as part of a comprehensive estate plan. One common solution is to create a power of attorney. The optimal protection is afforded by a durable power of attorney.

The basic principles

A power of attorney is defined as a legal document authorizing another person to act on your behalf. This person is referred to as the "attorney-in-fact" or "agent" or sometimes by the same name as the document, "power of attorney."

A power of attorney can be either specific or general. The general power of attorney is broader in scope. For example, you might use a general power of attorney if you frequently take extended trips out of the country and you need someone to authorize business and investment transactions while you're gone.

However, a specific or general power of attorney is no longer valid if you're incapacitated.



For many people, this is actually when the authorization is needed the most. Therefore, to thwart dire circumstances, you can adopt a "durable" power of attorney.

A durable power of attorney remains in effect if you become incapacitated and only terminates on your death. Thus, it's generally preferable to a regular power of attorney. The document must include certain language required under state law to qualify as a durable power of attorney.

Note: With a "springing" power of attorney, the document takes effect at the time you're incapacitated. But this technique is only available in a number of states.

The choice is yours

This leads to a common question: Whom should I name as the attorney-in-fact? Despite the name, it doesn't necessarily have to be an attorney, although that's an option.

Typically, the designated agent is either a professional, like an attorney or financial planner, or a family member or close friend. In any event, the person should be someone you trust implicitly and is adept at financial matters.

Regardless of whom you choose, it's important to name a successor attorney-in-fact in case your top choice is unable to fulfill the duties or predeceases you.

Usually, the power of attorney will simply continue until death. However, you may revoke a power of attorney — whether it's durable or not — at any time and for any reason. If you've had a change of heart, notify the attorney-in-fact in writing about the revocation. In addition, notify other parties who may be affected.

Health care implications

A durable power of attorney can also be used for health care decisions. For instance, you can establish the terms for determining if you're incapacitated. It's important that you discuss these matters in detail with the attorney-in-fact to give him or her more direction.

Don't confuse a power of attorney with a living will. A durable power of attorney gives another person the power to make decisions in your best interests. In contrast, a living will provides specific directions concerning terminally ill patients.

Finally, remember that a durable power of attorney can be established only for someone who's currently competent. However, just because a person has been diagnosed as having a specific disease doesn't mean that he or she is incompetent. For instance, if an elderly person is in the beginning stages of Alzheimer's, it still may be possible to use a durable power of attorney.

A durable power of attorney remains in effect if you become incapacitated and only terminates on your death.

Making the pieces fit together

Estate planning documents shouldn't be created in a vacuum. Coordinate a durable power of attorney with other components of your estate plan. Your estate planning advisor can provide the guidance that you need. •

Digital assets and your estate plan

This asset type requires special planning

The digital revolution has touched virtually every aspect of our lives. The result is that you likely have at least a handful of "digital assets."

These assets may include personal assets, such as online bank and brokerage accounts, and business assets, such as your company's website, domain name, client databases and electronic invoices. As with all your assets, you need to account for them in your estate plan.

Questions and answers

There are numerous questions to answer concerning your digital documents and accounts after you're gone, such as:

- How will your electronic records be handled after your death?
- Can family members obtain passwords and access to your accounts?
- Will the bills you're automatically paying online continue to be paid?
- What happens to other information you consider to be confidential?

Unfortunately, with the laws in this area still evolving, the answers often aren't clear. Another complication is that legal remedies vary from state to state, while many jurisdictions haven't enacted any legislation for these critical issues.

Action steps to take now

To account for your digital assets, conduct an inventory, including any computers, servers, handheld devices, websites or other places where these assets are stored. Next, talk with your estate planning advisor about strategies for ensuring that your representatives have immediate access to your digital assets in the event something happens to you.

Although you might want to provide in your will for the disposition of certain digital assets, a will isn't the place to list passwords or other confidential information. For one thing, a will is a public document. For another, amending your will each time you change a password would be expensive and time consuming.

One solution is writing an informal letter to your executor or personal representative that lists important accounts, website addresses, usernames and passwords. The letter can be stored in a safe deposit box, with a trusted advisor or in some other secure place. However, the problem with this approach is that you'll need to update the list each time you open or close an account or change your password, a process that's cumbersome and easily neglected.

A better solution is to establish a master password that gives your representative access to a list of passwords for all your important accounts, either on your computer or through a Web-based "password vault." Another option is to use one of several online services designed for digital asset estate planning.

Additional considerations

Other steps to consider include reviewing social media agreements. Read the fine print about your participation in social media sites and other online accounts. If you're not satisfied with the terms upon closer inspection, you might terminate your account. Be especially wary of restrictions on the use of a power of attorney.

Finally, consider using a digital storage unit. There are online services available, or you could save information using encrypted files on your computer or other device such as a

thumb drive. Wherever it's kept, be sure to share the location of the information, and the password for the files, with a trusted individual who'll need to access the data on your behalf.

Ownership issues

These can help your representatives identify and gain access to digital assets after you're gone. However, bear in mind that it's important for your estate plan to deal with ownership issues involving digital assets. This can be done in your will or by using a trust that provides the trustee with the authority to manage digital assets and transfer them to your beneficiaries according to your wishes. •

ESTATE PLANNING PITFALL

You're hiding assets without telling anyone

George was a successful entrepreneur. He accumulated significant wealth during his lifetime, including several real estate parcels, a wide array of securities, retirement plan accounts and IRAs, and various collectibles, in addition to the home he owned jointly with his wife, Theresa. He also took out several life insurance policies on his life.

In his will, George designated Theresa as the beneficiary of most of the assets but divided up some of the other property between his two children. George named his wife and children as equal beneficiaries on the life insurance policies. Sadly, George died earlier this year.

The problem: George had hidden some of his assets without disclosing their location to anyone in his family. In other cases, his loved ones had no information about account numbers or passwords. And neither Theresa nor the children even knew of the existence of one of the life insurance policies and two of the IRAs.

What happens now? It will take considerable time and effort for the family to track down all the assets and it's not certain that they'll be completely successful. And the family will likely never collect on the life insurance policy or find the IRAs they were never made aware of. By being secretive, George made things more difficult for his loved ones and actually cost them money.

Don't make the same mistake. Have an open discussion with the relevant parties about your possessions. List all the assets you own and provide locations, account numbers, passwords, etc. Arrange for this information to be stored in a secure place. In the event you are incapacitated or suddenly pass away, your family will not have the added stress of not having access to your assets.

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Updates on the Stokes Lawrence Trusts & Estates Team

The Stokes Lawrence Estate Planning and Administration practice was pleased to welcome two new estate planning attorneys last year. We are proud to continue our tradition of superb client service and community involvement. Below is a brief update on each of our practices:

RoseMary Reed represents clients in the areas of estate and tax planning, complex trusts, intrafamily gifts and wealth transfers, probate and trust administration, charitable planned giving, and business succession planning. She also advises nonprofit organizations on a variety of matters. She speaks regularly on trust and estate issues and recently finished her tenure as chair of the executive committee for the Real Property, Probate and Trust Section of the Washington State Bar Association.

Garon Jones focuses his practice on trusts, estates, and business succession planning for closely held businesses. He has served as the president of the Yakima Estate Planning Council and on the boards of the Yakima Valley Partners Habitat for Humanity, United Way of Central Washington, Yakima Greenway Endowment, Montessori School of Yakima, and Yakima Sunrise Rotary. Garon currently serves on the Planned Giving Advisory Council for the Yakima Union Gospel Mission.

Katie Groblewski assists high net worth individuals with estate planning and trust and estate administration with a focus on families with active closely held businesses and real estate. She also counsels individual, professional and corporate fiduciaries regarding their responsibilities when serving as a Personal Representative, a Trustee or an Agent under power of attorney. Katie regularly writes and speaks on complex topics related to estate planning and administration and is an active fellow of the American College of Trust and Estate Counsel (ACTEC).

Jenna Ichikawa recently became a Shareholder at Stokes Lawrence. She assists individuals and families in developing estate and tax planning solutions that are tailored to each client's unique needs. This typically involves complex planning in the context of dynamic state and federal gift and estate tax laws. She also counsels fiduciaries, families and organizations on important financial and tax matters such as trust and estate administration, gift and estate taxation, retirement asset planning, charitable planned giving, and the laws regulating tax-exempt organizations.

During his career, **Doug Lawrence** assisted high net worth individuals in evaluating and implementing personal planning strategies. He also advised individuals and professional fiduciaries on estate and trust administration matters and served as a mediator and arbitrator in trust and estate disputes. After more than 40 years in practice, Doug has become an Of Counsel member of the firm. He now spends time assisting other members of the estate planning group with special projects. Doug also serves on the Board of Directors for Heritage University and looks forward to spending more time traveling and learning new things.

George Velikanje has been practicing law for over 50 years. His practice has focused on transactional matters, with an emphasis in trusts and estates. George was elected as a Fellow in the American College of Trust & Estate Counsel (ACTEC) in 1977 and has been an active participant with the Real Property Probate and Trust sections of the Washington State Bar Association and the ABA. During his career George has been a frequent presenter at continuing legal education seminars, helping other attorneys with a more general practice avoid potential problems in the trusts and estates field. George now acts as a mentor to younger attorney and acts as a consultant on special projects.

Lori Rath has an established law practice that focuses on estate planning, estate and trust administration, estate and gift tax, and trust and estate disputes. Lori's practice also includes serving as a mediator for trust and estate litigation cases and as a facilitator for family meetings. Currently Lori is an active member of the Executive Committee of the Estate Planning Council of Seattle, and serves on the professional advisory boards for Seattle Foundation and Seattle Children's.

Pat Shirey assists individuals and families with estate planning, trust and estate administration and litigation, and elder law. He also represents businesses and nonprofits, such as the Diocese of Yakima, in transactional matters

Ellen Jackson assists clients, including families and owners of privately held companies, in navigating the complexities of estate planning and business succession planning. Ellen has served as President of the Yakima Greenway Foundation, as a board member of the Campaign for Equal Justice, and most recently, Ellen joined the board of Yakima County Volunteer Attorneys Services.

Alison Warden enjoys representing a broad range of clients in their estate planning and probate matters. Her practice includes representation of young families embarking on their first estate plans, artists and musicians planning for their unique assets, and beneficiaries and fiduciaries, including corporate fiduciaries and trustees, in trust, estate and probate disputes. Alison is the current CLE chair for the Tax Section of the Washington State Bar Association.

Saul Tilden has an estate planning and administration practice as an associate in the Yakima office. He assists clients with estate planning, probate and trust administration. He is a member of the Real Property, Probate and Trust Section of the Washington State Bar Association.

Michelle Mendoza assists closely held businesses with corporate legal needs, including transaction matters and disputes. She also has an estate planning practice where she helps clients with estate planning, trust and estate administration, and probate.

If you would like to reach Garon, George, Pat, Ellen, Saul or Michelle, please contact our Yakima office at 509-853-3000, and if you would like to reach RoseMary, Katie, Jenna, Doug, Lori or Alison, please contact our Seattle office at 206-626-6000.