

THE CARTER CENTER



Introduction to Estate Planning: *Everything Except Wills*

By Barry Nickelsberg, CAP, Chief Development Officer for Estate & Gift Planning

&

Mark N. Williams, Esq., CAP, Senior Associate Director

Thank You

Our work together continues today to improve the lives of millions of people, and we simply cannot thank you enough for making that possible through your ongoing partnership and support.



Thank You for Your Trust

We would also like to express our gratitude for allowing us to serve as your resource; it is a privilege to be trusted to provide you with information about these important topics.



DISCLAIMER

The information contained in this presentation and these materials are for educational purposes only, and should not be considered legal advice. Any information covered should be discussed with your own estate planning attorney to determine its suitability for your specific situation. The Carter Center is not involved in the practice of law and does not provide legal advice. Mark Williams is an attorney, but he is not your attorney and is not providing you with legal advice; no relationship (attorney/client or otherwise) is created by this educational webinar. By viewing this webinar, you agree to the above.



Overview

1. Powers of Attorney
2. Healthcare Documents
3. Trusts
4. Other Planning Tools
5. Charitable Planning Options



Why Do I Need All of These Documents?

- Pre-planning for the possibility that, at some point in your life, you cannot make decisions for yourself is one the most important parts of estate planning
- If tomorrow you were unable to communicate, or care for yourself, who would take over your typical responsibilities, or your finances?
- Failure to make these decisions will mean your loved ones must go to court and ask a judge to appoint a legal guardian; this may not be the person you would choose to manage your day to day responsibilities



What Is a Power of Attorney ?

- A Power of Attorney is an agreement between you and another person(s) you are choosing, who will make decisions for you (and how) if you can't make them yourself
- Generally they must be in writing, signed by the person giving the power, contain witness signatures, and be notarized



What is a Power of Attorney?

- Your Attorney-in-Fact (a.k.a. agent) is the person that you choose in your Power of Attorney to carry out the instructions on your behalf
- If you do not have a Power of Attorney and cannot make decisions, an agent must be appointed by a court and may not be the person you want to handle your affairs



Different Powers of Attorney?

Limited Power of Attorney/Special Power of Attorney:

- Typically gives narrowly defined powers
 - For example, you can give a person the power to pay your bills and access your post office box, but not the power to sell any property



Different Powers of Attorney?

Limited Power of Attorney/Special Power of Attorney:

- Given for a specific, limited time period
 - If you are planning to leave the country for an extended period of time, you could give powers to manage your affairs for that time
- Can be limited to specific events
 - A property manager could be given a special power to use if a hurricane affects your rental property



Different Powers of Attorney?

General Power of Attorney:

- Typically gives broadly defined powers
 - ❖ Often gives someone the power to sell any property, pay taxes, file lawsuits, make investments, manage a business or trusts, etc.
- Generally given for an unlimited time period
- Can be limited to specific powers
 - State law usually provides a detailed list of powers that a General Power of Attorney can use, but they can be expanded or limited if desired



What Activates Powers of Attorney?

- A Power of Attorney is generally effective when signed
- It is possible to plan ahead and include specific events that will trigger the Power of Attorney so that it is not immediately active
- Many people include a requirement that two doctors certify they can no longer make decisions for themselves before the Power of Attorney is active, but loved ones can be named to make this decision instead



Durable Powers of Attorney

Durable Power of Attorney: An Important Distinction

- In most states, a General Power of Attorney will end when you are no longer able to make decisions for yourself, or you pass away
- It is possible for you to specify that your General Power of Attorney will continue after you pass or become incapacitated, this is a Durable Power of Attorney



What Happens With My Will?

- Unless you have a Durable Power of Attorney that continues, once you pass away all Powers of Attorney end, and your Will takes over
- The responsibility for those same duties is generally transferred to the Executor you named in your Will
- Powers of Attorney can't be used to change your Will or to make one if you did not
- Watch our recent presentation about Wills – [CLICK HERE](#)



Financial Powers of Attorney

- Even though a General Power of Attorney is very broad and powerful, it may not be accepted by some banks or investment advisors
- A special Financial Power of Attorney provides specific authorization to manage retirement accounts, stock investments, bank accounts, rental property income, or sales of stock, bonds or other financial assets
- To be effective, state law often requires additional safeguards for a Financial Power of Attorney



Healthcare Powers of Attorney

- Sometimes called a Healthcare Proxy, or Medical Power of Attorney
- Healthcare Powers of Attorney appoint a person to make medical decisions for you if you are not able to make them yourself
- You can include instructions for the person you name, ensuring your medical decisions are followed



Healthcare Powers of Attorney

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established a national set of security and privacy standards for certain health information
- Make sure to add a HIPAA power, or add a HIPAA form for the person that you name



Advanced Directive For Healthcare

- Advance directives are also known as a Living Will
- This document allows you to control your medical care and end of life decisions, providing clarity to loved ones and doctors by specifying if you wish to have assisted feeding or breathing, etc.
- These instructions can guide the person you name in your Healthcare Power of Attorney to make sure your medical decisions are followed if you are unable to communicate



Healthcare Power of Attorney & Advanced Directive

- These documents work together
- By having both, you prevent any questions about your care from going to court and being decided by a judge who does not know you, or any person that you did not select
- The Healthcare Power of Attorney is important because new medical treatments may be approved and an agent can make decisions for you to receive such treatments when not listed in the Advanced Directive



Considerations When Choosing A Representative

- Because of the control granted by Powers of Attorney, it is critical to select someone you trust
- Name someone younger than you, and always name multiple back-ups
- Choose someone who will follow your wishes, and is comfortable doing so over the objections of family who may disagree with your instructions



Considerations When Choosing A Representative

- If naming more than one representative, consider naming an odd number to avoid having to ask the court to break a tie
- Often, the Power of Attorney does specify compensation for the person you name, but it is wise to include a note that reasonable compensation can be paid, or declined if the person is a close friend or loved one



Trusts

- Trusts are one of the most flexible and useful of all estate planning tools
- A trust is a legal entity that can be used to hold property and to manage money or assets for your benefit, and/or the benefit of loved ones
- When assets are given to the trust, you no longer own them, the trust does
- Trusts are private, and do not require court supervision or approval



Trust Basics

- Trusts can be created during life or after death, through your will
- Creating a trust requires a special document that spells out the people who manage the trust property, how they do so, and what control they have to give property to those you selected
- The person who manages the trust is called a Trustee



Trust Basics

- Trusts created during life can be either revocable or irrevocable
- Which you choose will depend on your goals and your desired level of control over trust management
- There are a variety of trust types and each has its own advantages and disadvantages
- Tune in August 20, 2020 at 2:00pm (EDT) which repeats on August 25, 2020 at 5:00pm (EDT) for a detailed discussion of trusts



How Can a Trust Help Me?

- Trusts can protect assets from creditors and can help heirs who may have problems with overspending
- Trusts may save on taxes, leaving more for loved ones
- Including a gift for charity is simple
- The Carter Center is happy to provide sample trust language for a charitable gift to your favorite organizations



Other Estate Planning Considerations

- Estate planning is about more than just choosing people to step in and take care of your affairs for you if something happens to you
- A good estate plan also reduces complexity, expense and the possibility of lawsuits among family members



Avoiding Probate Is Often A Primary Goal of Estate Planning

Probate is the legal process of offering a will (if any) to a court for approval and then distributing property to the people named in the will (or named by state rules where there is no will)

Probate is often a lengthy process and even with a will, a judge must supervise and approve certain things like the claims of creditors, the payment of debts, and transfers to minor dependents or heirs



The Probate Process

Regardless of whether or not there is a will, there are basic procedures that happen:

- **Step 1: File Petition for Probate; Pay fees**
- **Step 2: Swear in Executor/Personal Representative; Witnesses**
- **Step 3: Identify and sort estate property, File tax returns**
- **Step 4: Notify creditors –Publication; Sorting their claims**
- **Step 5: Pay debts and give remaining property to heirs**



How Does Having a Trust Affect Probate?

- When we pass away, our revocable trusts become irrevocable and continue until the trust document says the trust ends
- Anything held in your trust is no longer “yours” so it is not required to be included in probate (exceptions may apply)
- This means there is no need to ask a court to approve giving property to heirs before paying creditors, and this can reduce the additional legal and attorney fees that go with probate



Other Estate Planning Tools

- By carefully selecting the right assets to give your loved ones, they pay less in taxes and get more of what you intended
- Certain property, like retirement account funds, are very highly taxed when inherited, especially after the new SECURE Act (effective Jan. 1, 2020)
- You can use retirement accounts to provide a lifetime income for your loved ones, and a gift to charity at the same time. For more information, [*Watch Our Recent Webinar – CLICK HERE*](#)



Other Estate Planning Tools

- Insurance policies are one type of asset that can avoid probate
- By naming heirs as beneficiaries, they are entitled to receive the money directly from the insurance company
- Sometimes, people choose to use a special life insurance trust to manage and protect the insurance funds for their heirs
- You can also name your favorite charities as beneficiaries of all or part of your policy



Other Estate Planning Tools

- Commercial annuities are another asset that can avoid probate
- Beneficiaries are entitled to receive the money directly from the annuity company
- Not all annuities provide money to heirs when you pass away, each contract is different; be aware of this before purchasing the annuity
- You can also name your favorite charities as beneficiaries of all or part of your annuity



Other Estate Planning Tools

- Many people use a Transfer on Death Bank Account to ensure loved ones have access to the funds necessary to handle final expenses
- In addition to providing necessary resources, this strategy also avoids probate and court oversight
- The Transfer on Death Account automatically gives ownership of the account to your heirs who can use the money however they wish
- These can also be used to provide gifts to your favorite charities



Other Estate Planning Tools

- In some states, it is possible to use a Transfer on Death Deed to give real estate to your heirs
- Like a transfer on death bank account, the Transfer on Death Deed automatically transfers ownership of the real estate to your heirs
- Because of the potential for abuse, these Deeds are often highly regulated by state law
- You can use these Deeds to give a vacation home or your house to your favorite charities, instead of passing them through probate



Other Estate Planning Tools

- There are many other cases where Transfer on Death designations can be used to give property to heirs outside of probate
- Speak with a local estate planning attorney to learn more about the specific types of property that qualify for transfer on death status



Estate Planning With Non-Will Tools

- Giving smarter and more strategically: Step-Up Basis
- Certain assets can be given to loved ones with the added benefit they will pay no taxes on the inheritance (some state taxes may apply)



Estate Planning with Non-Will Tools

- Family business shares, a family vacation home, your stock portfolio, bonds, and many other assets can be given to a trust, or transferred on death with the right forms
- As long as the assets are given after you pass, they can qualify for a reset in value to their current market value, eliminating taxes due when the heir sells the property.
- Heirs get the full value of the gift you intended to give, rather than paying income taxes



Charitable Estate Planning with Non-Wills

- Beneficiary designations are easy; no lawyers (generally), no probate and no cost; examples include: Insurance policies, IRAs, and annuities
- By naming The Carter Center, and your other favorite charities, in a transfer on death bank account, you can give a specific amount, or a percentage of your account to fund programs of your choice
- This option has the benefit of providing a gift, without having to give up your control of your assets now.



Charitable Estate Planning with Non-Wills

- Naming The Carter Center, and your other favorite charities, in a your trust allows you to provide a specific amount, or a percentage of your trust to fund programs of your choice
- The Carter Center is happy to provide sample language you can use with your attorney to include a trust gift for charity



Charitable Estate Planning with Non-Wills

Creating a Charitable Gift Annuity or Charitable Remainder Trust using retirement account funds can help you:

- Avoid high taxes that reduce the inheritance, and,
- Provide a lifetime income to your loved ones, as well as a charitable gift

For more information, please [CLICK THIS LINK](#) to replay our webinar on the details of this important estate planning strategy



Be Sure To Tune In Next Time!

Our Introduction to Estate Planning series will continue with a detailed discussion of trusts:

- Revocable/Irrevocable
- During Life/After Death
- Trust Types, Benefits and Limitations
- Charitable Trusts and Planning Strategies

August 20, 2020 at 2:00pm (EDT) and repeats August 25, 2020 at 5:00pm (EDT)



Barry Nickelsberg and Mark Williams
are happy to work with you and your
advisors to discuss how these strategies
can fit your specific needs and goals.



THE
CARTER CENTER



BARRY NICKELSBURG, CAP
Chief Development Officer

ESTATE & GIFT PLANNING

453 Freedom Parkway
Atlanta, GA 30307 USA
Tel (404) 420-3868
Fax (404) 420-3453
barry.nickelsberg@cartercenter.org
www.cartercenter.org

THE
CARTER CENTER



MARK WILLIAMS, ESQ., CAP
Associate Director

ESTATE & GIFT PLANNING

453 Freedom Parkway
Atlanta, GA 30307 USA
Tel (404) 420-3883
Fax (404) 420-3453
mark.williams@cartercenter.org
www.cartercenter.org

THE
CARTER CENTER



Q & A

THE
CARTER CENTER

