



LIVING & TRUST
ESTATE DEED

Why Plan Ahead?

By Jill H. Teitel, Esq.

Tools you need to plan ahead:

- Wills and Trusts
- Advance Directives
- Guardianship Planning
- Benefits: Medicaid and Veteran's



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Benefits of Planning Ahead

- **Save money, time, and possibly paperwork**
- **Your peace of mind**
- **Make things easier for your family during difficult time**



What makes a Valid Will?

- **Must be competent – knowing your natural or adopted offspring – knowing the extent of your estate**
- **Free of undue influence from others**



What makes a Valid Will (cont'd)

- Free from duress of any kind
- Formalities adhered to:
 - witnesses
 - signatures
 - names all of the important persons necessary



Trusts

Legal entity that can be revocable or irrevocable

- Used to hold and manage property
- For benefit of you or others
- Can make during your lifetime



Pros of living trust

- Fluid transition of property to your chosen beneficiaries.
May contain assets such as your home, stock, savings, et.
- Ultimate control over the distribution of your assets
- Privacy
- May help avoid need for probate and guardianship



Irrevocable Trusts to Qualify for Medicaid

- **Must be done in advance!**
- **5 Year Look Back for all assets transferred out of your name**
- **Monthly Income and Assets limitations**
- **Community Spouse can maintain/live in the family home**



Differences between Wills and Trusts

Wills

- Goes into effect upon your death
- Is the only way to appoint Guardian for minors
- Must go through a process called probate if assets are not all jointly held or non-probate

Trusts

- Goes into effect immediately upon creation
- Easy transfer of your assets
- Doesn't require court involvement to take effect



Planning without a Will or Trust

- Assets that you have designated beneficiaries on:
 - Life insurance
 - IRA's
 - Pensions
 - Some bank accounts
 - Brokerage accounts (Transfer on Death)
- Joint property usually passes to joint owner
Real Estate, bank accounts, etc.



If you do not make your own Will or Trust, NY “makes” an estate plan for you

-Who will manage your estate?

-Where does your estate go?

-Who will be named Guardian if there is someone who is a minor whom is in your care when you die?

-Who will manage money that passes to any person who is unable to do so on their own.



Power of Attorney

- Legal document giving someone the power to handle your financial affairs and make financial decisions for you
- May grant many or few powers, e.g.: real estate transfers, property transfers
- Can pick one or two people to serve together or separately
- Can be activated in the event of your incapacity



What happens if I don't have power of attorney?

- If you become incapacitated, there will be no one with authority to manage your property
- Your family may have to go to Court to have a guardian
- Appointed to you to take care of your property
- Helpful to manage day-to-day financial lives



Other documents you Need:



- Health care proxy
- Living Will
- Appointment of Standby Guardian



Health care proxy

- Appoint ONE person to make health care decisions for you
- For nursing homes and hospitals, even if you don't have a health care proxy, there's default law with list in descending order of who can make health care decisions for you: guardian, then spouse, etc.



Living will



- **Legal document stating your wishes regarding life prolonging medical treatments – “end of life”**
- **Can be separate document, or can be added to your health care proxy**
- **Your agent under your Health Care Proxy should know your wishes as set forth in your Living Will**



No health care proxy or living will?

- Doctors who don't know you may end up making life terminating/life prolonging decisions for you
- Your loved ones may not know your wishes at a time when you can no longer tell them
- May need court proceeding to have guardian appointed to decide for you



Guardianships

- Court proceeding to have person/organization appointed to make decisions for and manage affairs of person who cannot do so for him/herself
- Can appoint a Guardian in the most least restrictive manner.
- Can have guardian of person, property, or both



Choosing the right guardian

- Age
- Experience
- Religious values
- Temperament
- Relationship to person
- Style
- Personal responsibilities
- Geography

Practical tip:

*Consider naming
successor guardians.*



Nursing Home Medicaid



- In 2018, if you qualify for Medicaid, New York State will put limits on your
 - Monthly income (\$842 per month)
 - Assets (\$15,150)
 - Monthly personal allowance (\$50)



Nursing Home Medicaid (Cont'd)

Your Spouse's finances are also mandated by Medicaid:

- **Assets:** \$123,600.00 Maximum spouse can keep in name
- **Income:** \$3,090.00 Maximum spouse can keep in name



Veteran's Benefits

Pension

Healthcare

Death Benefits

In-home care

Benefits for payment of home care





Disclaimer

- The information contained in this presentation is:
 - provided for general information purposes only
 - NOT legal advice
- Legal advice is dependent upon the specific circumstances of each situation



Jill H. Teitel, Esq. is a solo practitioner attorney who provides a wide range of planning, estate administration, litigation and guardianship legal services to clients. Jill's clients range from senior citizens to young entrepreneurs. Before opening her own law practice in 2011, Jill worked in the Surrogate's Court as a Court-Attorney Referee and has many years experience advocating and defending clients in trusts and estates matters. She is regularly appointed as a neutral evaluator by Judges in Surrogate's Court and Supreme Court in probate and Guardianship matters. She also serves as a neutral mediator for persons engaged in estate and business disputes. She is also licensed to practice in NJ.

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