

Estate Planning Basics



BY
THOMAS P KEENAN, ESQ.
KEENAN LAW OFFICES
48 ELM ST
SUITE 3
WESTFIELD, MA 01085

413-562-1500
WWW.KEENANLAWOFFICES.COM
KEENANLAW@GMAIL.COM

4 Essential Elements of a Estate Plan



- **Last Will & Testament**
- **Power of Attorney**
- **Health Care Proxy**
- **Homestead**

Definitions



- **Testator/rix – maker of the will**
- **PR – personal representative in charge of carrying out your wishes**
- **Devise – gift of property**
- **Heir – person entitled to take under will**

- **Principal – person who bestows power to Agent**
- **Agent/Attorney-in-fact – person given power to act on another's behalf**

Last Will & Testament



Last Will & Testament



- States how you want your assets to be distributed
- Names an Personal Representative(PR)and alternate
- Gives your PR power to act for your estate
- Names guardian of minor children

Last Will & Testament



- **How does it work?**
 - Upon the testators death a will takes effect
 - PR must file petition with Probate Court to become appointed
 - Once appointed, PR collects all of the testators property and holds it in trust for creditors of the Testator and for the heirs
 - Once creditors have been paid and PR distributes according to the Will

Last Will & Testament



- It is important to note that, while the testator is still alive, a Will has **NO** legal authority or power!
- Being named in a will, as PR or as an heir, does not mean anything until the testator has died
- An PR cannot give anything that the will does not explicitly give to an heir

Planned Giving



- Good tool to use if family taken care of in other ways, or if all loved ones predecease
- Sometimes specific language is necessary to ensure gift will be used in the manner you choose
 - Find out from each charity the recommended language

Planned Giving



- **Options:**
 - A fixed amount of money or specific property (stocks, real estate, etc.)
 - A percentage of your estate
 - A contingent bequest, naming a charity as a recipient should another beneficiary not survive you
 - A residual bequest, leaving a portion or the entire remainder of your estate to a charity after all else has been settled

Powers of Attorney



Powers of Attorney



- Allows a *principal* to appoint an *attorney in fact* or *agent* to take action on his/her behalf.
- *Agent* has power over the *principal's* **property**
- 2 Types
 - **Springing**
 - ✦ Takes effect upon disability or incapacity
 - **Durable**
 - ✦ Takes effect immediately upon execution and is terminated by revocation or death

Powers of Attorney



- Agent must act according to Principal's wishes
- If Principal is incapacitated, agent must act in the Principal's best interests
- Can give the power to do anything
or
- Power can be limited
 - For example, you can give a person the power to sign the closing documents to buy or sell property
- **Be sure you trust the person you name!!**

Powers of Attorney



- Power to act on behalf of principal ends upon principal's death
- Agent does not have power to choose funeral ceremony, pay bills after death, transfer title to car/house, etc...
- **Note:** It's a good idea to have a separate, joint bank account set up that is titled "burial account" to pay for some final expenses

Health Care Proxy



Health Care Proxy



- **Power of Attorney for Health Care Decisions**
- **You appoint someone to “speak” for you when you are not able to speak for yourself**
- **Allows you to have your wishes carried out in the event you are unable to approve**

Health Care Proxy



- Agent can ***only*** make decisions about your health care when you are, for some reason, unable to do that yourself.
- This means that your Agent can act for you if you are temporarily unconscious, in a coma, or have some other condition in which you cannot make or communicate health care decisions.

Health Care Proxy



- With your authority, your Agent can make **any** health care decision that you could, if you were able.
- If you give your Agent full authority to act for you, he or she can consent to or refuse any medical treatment, **including treatment that could keep you alive.**
- Your agent **MUST** know what your wishes are and **MUST** be someone you trust!

Health Care Proxy



- **HIPAA Laws**
 - Prevents health care workers from disseminating medical information to anyone other than the patient

- HCP's typically state that health care workers are permitted to give medical information to the agent

Homestead Act



Declaration of Homestead



- **What is it?**
- A type of protection for a person's residence
- Automatic protection of \$125,000 of equity
- Homeowners can file Homestead document with Registry of Deeds to provide additional coverage
 - \$500,000 of the equity in property
- Allows homeowners in Massachusetts to protect their primary residence

Homestead



- **How does it work?**
- Property is protected against subsequent attachment, levy on execution or sale to satisfy debts
- **Is not and should not** be used or relied upon as a substitute for adequate home insurance or any other type of liability insurance.
 - Homestead protection will be effective in the event a judgment against you is greater than the insurance coverage you have and the claimant seeks to go after your home to collect on the remaining obligation.

Homestead



- Homestead Act does *NOT* protect you from:
 - sale of property to pay taxes (federal, state, local)
 - debts incurred PRIOR to filing homestead
 - mortgage debt ON the home
 - child support or alimony
- Meant to protect from *unsecured* creditors

Questions?



Thank You

Please call or email any question you might have.

413-562-1500

keenanlaw@gmail.com

Special



- **Basic Estate Plan \$500**
- Includes the Following for an Individual:
 - Consultation
 - Professional document preparation including Simple Last Will & Testament, Durable Power of Attorney, Health Care Proxy, & Homestead
 - Execution ceremony (signing)
 - All notary services.
- Include a spouse for an additional \$350.00