

Legal Checklist

Important Topics to Review With Your Legal Advisor or Attorney



Power of Attorney: the authority to act for another person in specified or all legal or financial matters. For a power of attorney to become a legally enforceable document, at a minimum it must be signed and dated by the principal. Some jurisdictions also require that a power of attorney be witnessed, notarized, or both. Even when not required, having the document reviewed and signed (and often stamped) by a notary public may increase the likelihood of withstanding a legal challenge. A Power of Attorney is only valid during the life of the person giving the authority.



Living Will: an advanced healthcare directive, also known as a living will, personal directive, advanced directive, medical directive or advanced decision, is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make decisions for themselves because of illness or incapacity.



Healthcare Proxy (HCP): is a document or legal instrument with which an individual appoints someone to legally make healthcare decisions on behalf of the patient, when the patient is incapable of making and executing the healthcare decisions stipulated in the proxy. Once the health care proxy is effective, the agent continues making healthcare decisions as long as the primary individual is legally incompetent to decide.



Guardian(s): a person who looks after and is legally responsible for the property of someone who is unable to manage their own affairs, usually an incompetent or disabled person or a minor child whose parents have died. An alternate guardian or successor guardian should be named in case the first appointed guardian is unable or unwilling to serve as guardian. A successor guardian usually has the same duties and powers as the previous guardian.



Executor(s): (of an estate) is an individual appointed to administer the estate of a deceased person. The executor's main duty is to carry out the instructions to manage the affairs and wishes of the deceased person's estate. The executor is appointed either by the testator of the will (the individual who makes the will) or by a court, in cases wherein there was no prior appointment.



Titling of Property: when executing updated and properly drafted wills and trusts you want to coordinate the titling of property so that it correlates with the objectives of your estate planning documents. This would address how real estate, marketable securities, checking/savings accounts and brokerage accounts should be held. If titled incorrectly, it could negate the purpose of the new testamentary documents.



Credit Shelter Trust (CST): is designed to allow couples to reduce estate taxes when passing assets on to heirs, typically the couple's children. This type of irrevocable trust is structured so that upon the death of the trust's creator (or settlor) the assets specified in the trust agreement and the income they generate are transferred to the settlor's spouse. However, a key benefit to this type of trust is that the surviving spouse maintains certain rights to the trust assets during the remainder of his or her lifetime. Under specific circumstances such as the need to fund certain medical or educational expenses, the surviving spouse can tap into the trust's principal and not just the income. Upon the surviving spouse's death, the trust's assets are transferred to the remaining beneficiaries without any estate taxes levied.



Insurance Trust: is either revocable or irrevocable and can be a tool for a family to solve some of their estate planning needs. The trust is both the owner and beneficiary of one or more life insurance policies. Upon the death of the insured, the trustee invests the insurance proceeds and administers the trust for one or more beneficiaries. If the trust is revocable the assets are part of the estate for tax purposes. If it is irrevocable the assets are not part of the estate for tax purposes.



Trustee(s): an individual person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified. A successor trustee is a person who assumes control of the trust after the initial trustee dies or becomes unable to continue with his or her responsibilities.



Portability: applies to the federal estate tax exemption between married couples and comes into play if the first spouse dies and the value of the estate does not require the use of all of the deceased spouse's federal exemption from estate taxes. The amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption *plus* his or her own exemption when the surviving spouse later dies



Special Bequests: a testamentary gift of a specific item of property (e.g., a Picasso painting) that can be easily identified and distinguished from all other property in the testator's estate.



Common Disaster Clause: a provision in most life insurance policies (and some wills) under which the primary beneficiary of the policy (or will) must survive the insured by a certain number (usually 60 to 90) days to qualify to receive the policy's (or will's) benefits.