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Basic Instruments of Simple Estate Planning

1. **Will**

- a. Purpose - directs what will happen to your possessions after you die. Can appoint guardians of children and trustees of trusts.
- b. What I need to know - who you want as executor (the person who collects your assets and distributes them according to the instructions in your will), trustee (the person who is in charge of any trusts you create), and guardian (the person who will take care of your minor children), with one or two backups for each position. The same person can be an executor, trustee, and guardian, if you want. Also, if you have minor children, you may want to do a three-part distribution of their inheritance to them so that they don't get their entire inheritance at 18. If so, I need the three ages, e.g., 18, 25, 30, or whatever 3 ages you pick. Also, I need to know who you want to get your assets.

2. **Statutory Durable Power of Attorney**

- a. Purpose - allows someone else to do all kinds of things for you (it's a very big list that you can delete parts of if you want). Can be effective now or can come into effect later.
- b. What I need to know - who you want to be your attorney-in-fact and whether and how many backups you want. Also, I need to know when you want it to come into effect. I recommend that if you want this document that it start now as opposed to some time in the future.

3. **Medical Power of Attorney**

- a. Purpose - tells medical personnel who is to make your medical decisions if you can't speak for yourself.
- b. What I need to know - who you want to make your medical decisions if you can't speak for yourself and whether and how many backups you want.

4. **HIPAA Release**

- a. Purpose - tells medical facilities to release your medical records to whomever you want, usually the people listed in your medical power of attorney so that they can make an informed decision before speaking for you.
- b. What I need to know - who you want to have your medical records.

5. **Directive to Physicians and Family or Surrogates** (also known as "Living Will")

- a. Purpose – tells medical providers and your family whether to “pull the plug” or not.
  - b. What I need to know – nothing. You check the box you choose when you sign this document.
6. **Declaration of Guardian in the Event of Later Incapacity or Need of Guardian**
- a. Purpose – directs who will be your guardian if you become incapacitated later in life, for example, if you are diagnosed with alzheimers. Can also direct who is not to be your guardian.
  - b. What I need to know – who will take care of you when you can’t and one or two backups. Also, if you want to expressly disqualify anyone, I need their names, too.
7. **Declaration of Appointment of Guardian for Minor Children**
- a. Purpose – we usually do this in your will, but if you want a separate document that appoints guardians for your children, we can also do this document.
  - b. What I need to know – who you want to take care of your children and one or two backups.
8. **Appointment of Agent to Control Disposition of Remains**
- a. Purpose – this document is usually used for someone who wants to be cremated and is concerned that their family will not approve. It appoints someone to do with your body whatever you want done after you die.
  - b. What I need to know – who you want to dispose of your remains, any backups, and any special instructions you want to give them about what you want done.
9. **Do Not Resuscitate**
- a. Purpose – this document tells health-care providers that you don’t want ANYTHING done if you even pass out. I you sign it, they won’t even do cpr if you faint. I don’t draw up this document, I just have the form if you want it. I insist that you discuss it with your physician before you sign it.
  - b. What I need to know – nothing. I just give you the form and you fill it out.
10. **Authorization to Give Medical Consent for Treatment of Minors**
- a. Purpose – lets you get medical treatment for other people’s children if, for instance, you travel with them or lets others get medical treatment for your children. Can be for a limited time, for instance until the end of the vacation, or can be permanent, for instance for the grandparents.
  - b. What I need to know – who you want to be able to consent to medical treatment for your children or whose children you need to get medical treatment for and the necessary dates.

Misconceptions about estate planning – ALL OF THESE ARE WRONG!

1. **If you don't have a will, when you die, all your property goes to the state of Texas.** The truth is, if you die without a will, your property goes to the people listed in the Texas Probate Code, the ones the Texas Legislature thought you would want it to go to. If you have a blended family or children from more than one marriage, I promise you will not like what the Legislature decided for you. Even if you don't have a blended family, you should just do a will and tell everyone what you want anyway.
2. **If you don't have a will, you can avoid probate; and if you don't have a will, you can't probate.** The truth is, if you don't have a will, you can probate and most likely will have to probate at much greater expense than if you just did a will in the first place.
3. **Everyone needs a trust, it's cheap – cheaper than probate - and it solves all your problems.** The truth is just too long to type out here. If you really want a trust, I'll be happy to do one for you and charge you for one, but it will not solve all your problems, it may create problems, and you will most likely have to probate anyway. If you believe this one, you've been watching too many TV commercials done by people who do nothing but sell trusts even though they aren't attorneys. Don't get me wrong, trusts are sometimes necessary and are very good tools to accomplish specific objectives; but they will not in and of themselves help you avoid probate.
4. **Probate is long and expensive, and you should avoid it at all costs.** The truth is, Texas has a very sleek, effective, quick, and inexpensive probate system, if you have a properly drawn up will. Get a properly drafted will and let it go through probate. IT'S THE EASY WAY OUT.
5. **The inventory you file in probate will disclose all your assets to the public.** Actually, this one is partly true and partly false. Until very recently, in most probate cases an inventory of all of the estate's assets had to be filed, that is, a list of everything the deceased owned on the date of death was filed with the court and made public. However, the Legislature has just amended this statute to say that only those estates in which the deceased had debt on the date of death have to file an inventory. PAY YOUR DEBTS BEFORE YOU DIE AND YOUR INVENTORY WON'T BE PUBLIC.
6. **It's cheaper and easier to draw up your own will, especially if you use the internet or buy one of those kits at the office supply store.** Don't you believe it. Texas has very unique and specific requirements of what has to be in your will. What's out there on the internet or at Office Max will not meet these requirements.
7. **In 2013, the estate tax credit is going back down to \$1,000,000.00.** The truth is, current tax law gives everyone a credit against (or a decrease in) the value of their estate for calculating whether they have to pay federal estate taxes. Recently, Congress enacted a law that sets that amount for 2011 and 2012 at \$5,000,000.00. If your estate is worth less than \$5,000,000.00 and you die in 2011 or 2012, your estate pays no estate taxes. In 2013, this law lapses and we revert to an older version of the estate tax laws that reduce the estate tax credit back down to \$1,000,000.00. If Congress does nothing between now and 2013, the current tax law just dies and we revert to an older version (the 2001 version) of the tax code, which said that the estate tax credit was \$1,000,000.00. However, tax experts say that allowing the estate tax credit to revert to \$1,000,000.00 is not anticipated. I will keep tabs on this situation. Everyone should just call me in 2013.