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ESTATE PLANNING START UP GUIDE

For Those Looking to Plan Ahead

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ESTATE PLANNING START UP GUIDE

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OVERVIEW AND DISCLAIMER

Nowakowski Legal PLLC is pleased to provide you with this Estate Planning Start Up Guide for Those Looking to Plan Ahead. An estate plan consists of the management and disbursement of a person's net worth (i.e. estate) during the person's life and after their death with an effort to legally minimize such things as transfer fees, probate costs, and tax consequences. In addition, estate planning can also address a person's wishes (medical and financial) should they become incompetent, incognizant, or otherwise unable to handle their own affairs. This is generally accomplished through the strategic use of wills, trusts, powers of attorney, probate avoidance, gifts, and other legal devices.

The purposes of this guide is to give you a detailed, helpful, but most importantly easy to read point of reference for many of the things you will need to consider when planning for your estate. While we hope that this guide helps you to better understand the estate planning process, our ulterior purpose is the hope that you will utilize Nowakowski Legal PLLC's services when you are actually ready to move forward with preparing your will, power of attorney, trusts or other legal items related to your estate plan.

Please be aware that this guide is not providing you with legal advice and it does not create an attorney client relationship between you and Nowakowski Legal PLLC. If you are interested in becoming a client of Nowakowski Legal PLLC, please feel free to contact us and schedule a consultation at any time.

In addition, this guide does not include, nor should it be considered, a comprehensive description of all items that must be taken into account when creating an estate plan. We provide no representations, guarantees or warranties about the accuracy, reliability, completeness, correctness or timeliness of any and all information contained herein; this is due to the fact that different jurisdictions, areas, opinions, interpretations and practices exist which may or may not conflict with the opinions discussed herein.

Other Helpful Resources

The following are several additional websites and references that contain free and extensive information that can help you to better understand the benefits, intricacies and options available when planning for your estate. We highly suggest that you check out each of the below to obtain a stronger grasp of the benefits to having a solid estate plan.

- The Internal Revenue Service - https://www.irs.gov/filing/estate-gift-taxes
- EstatePlanning.com - http://www.estateplanning.com/
- Sound Generations - http://seniorservices.org/financiallegalprograms/Home.aspx
- The American Association of Retired People - http://www.aarp.org

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- The Tax Policy Center - http://www.taxpolicycenter.org

Guide by Section

Please be aware that this guide only contains a very basic explanation for estate planning considerations. That being said, our goal was to at least touch upon as many of the major estate planning tools as possible in order to provide you with enough information to begin determining what you may need in regards to planning for your estate.

Additionally, we complete this Estate Planning Start Up Guide with a checklist of necessary items and information needed for planning your estate. This provides a list of all the general items and information you would likely need to gather and bring to an attorney when hiring him/her to prepare your estate plan.

While the following sections are not in any particular order, we highly suggest that you hold off on gathering the items and information listed in the checklist until after you have reviewed the other sections of this guide; reading the other sections first will help to give you an understanding as to why those items are necessary.

SECTIONS

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WHAT IS AN ESTATE PLAN?

We live our lives trying to build what we are able, acquire what we can, and make as big a mark on the world as possible, but we unfortunately cannot take any of that with us. So what happens to everything that you've done, built and accumulated during your life once you pass away?

Simply put, an estate plan is the strategic method through which you direct how and where your assets are transferred upon your death. Without having an estate plan prepared, your property, accounts, heirlooms, businesses and other possessions will be distributed in accordance with the current intestate laws of your State; this means you will have little to no control as to who gets what upon your death. In addition, without an estate plan in place, a large portion of your accumulated wealth could be subject to a severe amount of tax consequences (state and federal) and probate costs.

Another factor of estate planning is to put in place directives in the event you ever become incapable of making your own financial and/or medical decisions. Who should run your business? Who do you trust to pay all of your bills on time? What do you want to happen if you're medically deteriorating, in pain, but unable to speak for yourself? These are all very serious questions that if you don't have a plan ready, could result in decisions being made that you would not want.

Why Do It Now?

It's important to prepare for your estate when your still physically able and of sound mind. If you were to fall gravely ill, become incompetent, or actually pass away prior to preparing your estate plan, well, then it will be too late. The Courts do not allow the preparation of most estate documents unless you are mentally competent to do so.

Also, nobody ever wants the worst to happen, but sometimes it does, and most often it is unexpected. While we all hope to live a long and fulfilling life, what would happen if you were to pass away tomorrow? You need to make sure that your loved ones are accounted for, your possessions are transferred to where you want them, and that any outstanding affairs that need to have settled are properly dealt with. An estate plan will help to assure these things will happen.

What Does an Estate Plan Actually Do?

Simply stated, an estate plan protects your family and property after your death or incapacitation. Without an estate plan, your loved ones will be left without any direction as to what you would have wanted them to do. This can lead to confusion, disagreement, and the likelihood that your ultimate wishes are not adhered to. Being prepared for these situations will provide you and your loved ones with the guidance necessary in such difficult times.

Primarily, a well-made estate plan provides the following:

- Distribution of Belongings Upon Death in the Manner You Want
- Names Guardians/Custodians for Minor Children

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- Helps to Avoid Probate
- Can Reduce Tax Consequences
- Determination of Executor (Personal Representative)
- Provides Direction to Financial and Medical Decisions Should You Become Unable to Make Them Yourself
- Reduces Conflict Between Beneficiaries/Heirs/Issue of Your Estate
- And More.

What Does an Estate Plan Consist Of?

What your estate plan consists of is entirely dependent on several factors; the size of your estate, how many people you wish to name as beneficiaries, where you want your worldly possessions to be distributed, what you want to be done if you are ever incapable of making your own financial/medical decision, and a myriad of other factors. That being said, there are several general components to an estate plan which are used as the primary vehicles for seeing your wishes upheld.

These primary vehicles are as follows:

- Last Will and Testament
- Trusts (Revocable and Irrevocable)
- Powers of Attorney
- Joint Accounts/Ownership
- Guardianship
- Insurance Policies
- Health Care Directives
- And More.

Several of the above examples will be discussed in greater detail throughout this guide. Of course for a more thorough explanation and review as to what will work best for you, it is highly advised that you meet with an attorney to discuss your options for estate planning. Nowakowski Legal PLLC is available to discuss with you all of your estate planning needs. Contact them today to schedule a free consultation.

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AVOIDING PROBATE AND TAXES: WILLS, TRUSTS, AND OTHER MEANS

Other than providing guidance to loved ones as to how you want your worldly possessions to be distributed, estate planning can also have some major benefits in regards to probate, federal estate taxes and (potentially) State estate taxes. Depending on the methods you use to set up your estate plan, the size of your estate, and whether or not the State in which you live has inheritance and/or estate taxation (i.e. Washington State has an estate tax), an estate plan can reduce the time it takes for your beneficiaries to receive the assets you wish to transfer to them and it can potentially reduce the amount of taxes and costs that will be deducted from your estate prior to it being transferred to your beneficiaries.

This section will only be discussing the disbursement of your assets upon death; the following section will then discuss in detail the adherence to your financial and medical directives upon incapacity or incognizance.

What is Probate?

Probate is the legal process in which a Court will oversee the disbursement and resolution of the deceased's remaining financial and personal affairs. Upon filing a probate with the Court, it will immediately appoint an executor (personal representative) of an estate whose job it will be to determine the relevant assets of the decedent, gather said assets, and distribute the assets in accordance with a will or relevant law (or both) to creditors, heirs, and beneficiaries of the decedent.

Depending on how your estate plan is structured (or if you have an estate plan at all), probate is also the means by which your will or intestacy (without a will) may potentially be disputed by your creditors, heirs and beneficiaries. This is one of the primary reasons why it is important to have a well-made estate plan in place prior to your death; it will either allow you to avoid probate all together, or will in the very least remove much of the possibility for dispute amongst your creditors, heirs and beneficiaries.

While not all States have a probate system that is detrimental to utilize (Washington's probate system is actually well made and relatively inexpensive), the fact is that the majority of probate systems provide the following problems:

- **Expense** – generally, probate costs are based on the size of the estate going through probate. Add this to the likelihood of needing to hire an attorney to assist with probate, compensating an executor (personal representative) for the work they put in to the action, and having to pay any additional costs and/or fees that arise throughout the probate process, and you might be looking at a sizable amount of money that will not be finding its way to your beneficiaries.

- **Not Private** – going through probate is a public matter. Everything that occurs through the probate process is a matter of the public record and your beneficiaries (and the entire public for that matter) will be aware of what assets you owned, who you transferred them to, and anything else regarding your financial or personal situations you had resolved through this process.

- **Less Control** – this is not as great a concern if you have a will, but if you are intestate (without a will), you will essentially be giving up your right to choose how your assets will be distributed, where your minor children will be placed, and other such important items. Instead, your State's laws will govern such matters and will be enforced by the Judge in your probate matter.

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- **Time** – one of the greatest concerns and drawbacks of probate is the amount of time it can take to finalize everything. Depending on the size of the estate, the amount of beneficiaries that contest the distributions, and the difficulty in tracking down creditors, heirs and beneficiaries, probate can take anywhere from several months to several years. This could be a long time for your loved ones to wait to receive any assets you would have liked to have given them.

What Estate Tax Consequences Should I Consider?

You generally need to be concerned with estate taxes both at the Federal level and at the State level. The Federal estate tax must always be considered upon your death, but depending on the State in which you reside, you may or may not have to deal with State estate taxes; Washington State for example does happen to have a State estate tax.

As of the time of this guide being written, Federal estate taxes allow for no estate taxes to be assessed so long as your taxable estate is less than $5.45 million dollars. Essentially, at the time of your death, your executor (personal representative) will accumulate and add up the value of all of your assets, make any relevant deductions, and then determine if your taxable estate surpasses the $5.45 million dollar amount. If you surpass this amount, any amounts over $5.45 are generally taxed at the top amount of 40%.

Many people make the mistake of assuming their estate will never surpass the $5.45 million allotted by the Federal government, but that would be a mistake. Assets acquired throughout a person's life tend to accumulate, and while it may not seem like it during your life, once everything is gathered and accumulated for tally, it generally results in a much larger number than one might expect (i.e. properties, bank accounts, stocks, life insurance, vehicles, bonds, IRAs, etc.).

The other consideration that must be taken in to account are State estate taxes. Some States do not have them (i.e. Florida), some States will have an estate tax (i.e. Washington), and some States will have what is called an inheritance tax (i.e. Kentucky). Just to give a brief explanation of an inheritance tax, it is similar to an estate tax, but instead of the estate being taxed, the person whom inherits the assets is taxed.

As all States are different in regards to this matter, you are best to speak with an attorney for purposes of determining how your State handles transfers upon death. Most State estate taxes (or inheritance taxes) apply at a lower threshold than Federal estate taxes (i.e. Washington's kick in at $2 million at the time this guide was written); however, State estate tax payments can be deducted from your Federal estate tax thereby sometimes assisting the estate in maintaining below the Federal estate tax threshold.

The bottom line is that depending on the size and value of your estate, estate taxes can cause a large portion of your assets to not reach your loved ones. Taking the time to make an estate plan can help to minimize the amount of estate taxes you will have to pay and will insure that your beneficiaries see a larger portion of the assets you intend to leave them.

Last Will and Testament

The most well-known estate planning tool is the last will and testament. A will is a legal document that, if prepared properly, will distribute portions of your estate to the individuals whom you direct distribution. In addition, it can be used to provide some direction to your loved ones upon your death as to your funeral wishes, custody of minor children, and other such items.

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It is important to note that a will alone will generally not allow you to avoid probate unless you have a relatively moderate estate. However, a properly constructed will is key to insuring that if you do go through probate, the process will be as streamlined as possible and it will clearly direct the executor (personal representative) as to how your assets should be distributed and your affairs should be resolved.

Lastly, it should be noted that not all items can be passed through a will; this is especially true for several items which are designed to avoid or are specifically exempted from the probate process. These items include, but are not limited to, the following:

- Jointly-owned assets
- Life Insurance Death Benefits
- Retirement Plan Death Benefits
- Trusts
- And More.

So why use a will if it might not avoid probate? For one thing, it can be used as a backup device for distributing any assets you may not have specifically placed in to a non-probate vehicle. For example, perhaps you have a few bank accounts which you did not transfer to a trust or which you did not create as a joint account; a will could be used as a "catch-all" device designed to state that any remaining assets within your estate will be devised to whom you designate (this is what is known as a "pour-over" will). In addition, a will can be used to specifically declare whom you wish to appoint as your executor (personal representative) of your estate. Lastly, in the event that you have any minor children, a will is a vehicle in which you are able to name a custodian or guardian for the child(ren).

Joint Ownership, Lifetime Transfers and Spouse Benefits

Joint Ownership - Certain properties and assets can be held jointly in life so that upon the death of one of the joint owners, the remaining owner(s) will take the decedent's portion automatically; if done properly, these accounts can be transferred outside of probate. Examples of what can be held jointly are such things as properties, vehicles, bank accounts, and more. However, you will want to speak with an attorney in regards to the best ways to structure joint ownerships.

While it will assist in helping to avoid probate, tax consequences and other complications can arise from the joint ownership of property.

Lifetime Transfers - Alternatively, one of the best methods to avoid probate and estate taxes is to utilize recognized methods of making lifetime transfers. In layman's terms, you can begin to transfer some of your assets to your loved ones prior to your death for the purposes of avoiding probate and estate taxes. You need to be made aware that the IRS does regulate lifetime transfers of assets, but does allow for certain exemptions which you can (and should) capitalize on. For example, you are allowed to make a gift to an unlimited number of individuals of up to $14,000.00 per year ($28,000.00 from a married couple "splitting gifts."). Multiple other methods of lifetime transfers exist which can be capitalized upon; you should speak with an attorney to learn more about what they are and if they can be utilized for you.

Spouse Benefits – One of the greatest federal estate tax deductions available is the unlimited deduction allotted a spouse. Essentially, upon the death of one spouse, anything transferred from the decedent spouse's estate to the

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remaining spouse is deducted from the estate of the decedent; this can help to avoid estate taxes altogether (albeit temporarily) should everything be left to your remaining spouse. In addition, any part of the $5.43 million allotment not utilized by the decedent spouse may be added to the allotment of the remaining spouse upon his/her death. As this is a somewhat complicated concept, please see the below example (only applies toward Federal estate taxes).

Example: Spouses A and B are married with two children. Spouse A dies with an estate of $10 million, but leaves everything to Spouse B. Spouse B is able to take all $10 million of the estate without having to pay any Federal estate taxes (due to the spouse exemption). Several years later, Spouse B dies with a total estate of $10.5 million leaving everything equally split to his/her children. Because Spouse A never had to utilize his/her $5.45 million Federal estate tax allotment, it is transferred and added to Spouse B's $5.45 million federal estate tax allotment. As such, Spouse B does not pay federal estate taxes until he/she passes the $10.86 million threshold; both of their children take $5.25 million without having to lose anything to Federal estate taxes.

Trusts

One of the most useful tools in estate planning is the trust. A trust is a complicated legal arrangement in which you transfer assets to a designated third party, known as the trustee, whose purpose is to manage the funds in accordance with the trust document and on behalf of your desired beneficiary(ies). The benefit of a trust is that they can be arranged in a multitude of ways and can specify exactly how and when the assets pass to the chosen beneficiaries.

In order to better understand a trust, you should first have an understanding of the parties to a trust. Trusts generally contain the following three types of parties:

- **Grantor** – this is the party creating and funding the trust. They will have the trust document drawn up, determine who the trustee and beneficiaries will be, determine what assets will be placed in the trust, and will dictate how the trust is to be managed and disbursed.

- **Trustee** – this is the party who will oversee the management of the trust. They will have a fiduciary duty to manage the trust as directed and in the benefit of the beneficiaries. While they do have control over the management and disbursement of the funds, the trust assets are not to be utilized in any other manner by the trustee other than as directed within the trust document.

- **Beneficiary** – this is the party who is specifically named to benefit from the trust. However, they are only able to benefit from the trust in the manner the trust directs. For example, if a trust states that a beneficiary is only to receive a disbursement upon acquiring a college degree, then the beneficiary will not obtain that disbursement until he/she obtains a college degree.

Trusts are some of the most versatile forms of asset transfers and can not only assist you in avoiding probate, but they are also capable of helping you to minimize estate taxes. Additional benefits of trusts include, but are not limited to, the following:

- **Better Control** - You can make the terms of a trust to your exact specifications. This means you can control to whom distributions may be made, when distribution can occur, and under what conditions distribution will be provided. For example, you can specify that your trust is to pay out to your child $1,000.00 a month after he reaches the age of 25, but only if he has acquired a College Degree.

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- **Better Privacy** – a trust generally does not go through probate and is instead handled privately. As such, the transfer of your estate to your beneficiaries will be more private and the general public will not have as much access to your personal affairs.

- **Better Protection** – well-made trusts can help to protect your estate from your heir's creditors or from beneficiaries who are not very skilled at managing their money.

A multitude of variations for trusts exist which can assist you in planning for your estate. It is important to note that trusts are complex arrangements that generally require the advice and counsel of a qualified attorney. Nowakowski Legal PLLC is available to discuss any and all questions you may have in regards to utilizing a trust or trusts with your estate plan. Feel free to call and schedule a free consultation.

The most commonly used trusts are as follows:

- **Revocable Trust** – a revocable trust is capable of being revoked by the grantor up until the time of death. This means that they retain the ability to recover any and all assets used to fund the trust. However, this is generally not required as most grantors create a revocable trust and simply name themselves as both the trustee and beneficiary of the trust. In this manner, they are capable of retaining complete control over the assets used to fund the trust until such time as they are incapable of doing so. Upon their incapacity or death, they will have a successor trustee pre-named in the trust who will then handle the trust on behalf of any remaining beneficiaries that are named in the trust.

  While a revocable trust can help you to avoid probate, it unfortunately is still usually subject to estate taxes and does not offer much protection from creditors.

- **Irrevocable Trust** – in contrast to a revocable trust, an irrevocable trust generally cannot be reversed once created. However, because this has the effect of completely severing the designated assets out of an estate, it provides some interesting options in regards to potentially avoiding estate taxes, avoiding creditors, and avoiding other negative consequences that would occur if the assets were to remain within a personal estate.

  One of the primary complications of an irrevocable trust arise from the transfer of the assets in to the irrevocable trust potentially being considered a gift to the beneficiary(ies). As always, it is advised that you seek the counsel of an experienced attorney if you are interested in having an irrevocable trust prepared.

- **Bypass Trust** – a bypass trust is designed to utilize a decedent spouse's estate tax deduction (currently $5.45 million) to fully fund the bypass trust upon his/her death. Once the trust is fully funded up to the deductible amount, the remainder of the decedent's estate is transferred to his/her spouse under the unlimited spouse deduction for estate taxes. The result is that a trust will be created that is funded with $5.45 million dollars for purposes of distributing to beneficiaries in the manner directed by the decedent within the trust document, and the remainder of all assets of the decedent are passed to his/her spouse without tax consequence (albeit temporarily). The benefit of this is that all of these transfers will occur in a manner that no estate taxes will need to be paid.

  The drawback of this method is that it does not allow the decedent to pass his $5.45 million estate tax deduction on to his spouse. However, if you were to simply pass the deduction on to your spouse rather than utilize a bypass trust, growth in the assets while held by the surviving spouse is not excluded from the gross estate assessed for taxation and may run up against the estate tax exemption amount in effect when the surviving spouse dies. As such, you are able to accumulate more income with a bypass trust than by simply allowing a spouse to benefit from the transfer of the $5.45 million deduction.

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- **Irrevocable Life Insurance Trust** – an irrevocable life insurance trust is a method in which a trust is created for purposes of purchasing, managing and owning a life insurance plans on the future decedent. To set up an irrevocable life insurance trust, first provide funds for the trust to pay initial premiums, and then the trust itself will purchases the life insurance policy naming the future decedent as the insured. The proper creation and execution of an irrevocable life insurance trust will essentially allow a person to avoid having to include the insurance proceeds within your taxable estate; this can result in a significant amount of money being transferred to your beneficiaries without and federal estate tax consequences.

- **Other Trusts** – a multitude of other types of trusts exist for various situations. It is important that you meet with an attorney to discuss which, if any, would best benefit you and your estate.

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AUTHORIZING OTHERS FOR MEDICAL AND PERSONAL AFFAIRS

Another aspect of estate planning is putting in to place a plan directing others as to what you want to occur should you become incompetent, incognizant or otherwise unable (or sometimes unwilling) to handle your own affairs. This can be as simple as executing a power of attorney allowing someone to handle your financial decisions, assigning a specific person to make medical decisions on your behalf should you become incapable of doing so, or having a living will set in place directing how you wish to be medically treated should certain circumstances occur. Regardless, the underlying theme remains the same; if you want to ensure that your directives are adhered to once you are no longer capable of physically giving them yourself, you need to make sure you have an estate plan in place.

This section will only be discussing living directives that provide instruction as to what you wish done in the event you are still alive, but unable to or do not wish to handle your own affairs; the previous section discussed in detail the disbursement of your assets upon death.

The Difference Between Incognizant and Incompetent

The general reason for drafting living directives as part of your estate plan is to prepare for the event of your incognizance or incompetence. In order to provide a better understanding of what directives should be provided under certain circumstances, below is a brief definition of the general states in which you are unable to manage your own affairs.

- **Incognizant** – incognizance is the state in which you lack awareness or consciousness. If you are unable to communicate, understand or otherwise interact with the world, you are determined to be incognizant. If you are incognizant, you are unable to communicate as to how you wish for your financial or medical affairs to be handled; hence, you would benefit from having some form of estate plan in place.

- **Incompetent** - lack of legal mental capacity to make rational and/or meaningful decisions. Also known as "incompetency." If you are incompetent, then you are generally not of sound mind and unable to make legal decisions that would affect what your normal sound judgment would want; legal actions taken or attempted to be taken while incompetent will generally not result the action being considered valid. (i.e. signing a will while incompetent will generally result in the will not being considered valid).

Powers of Attorney

A power of attorney is a document which can grant the legal authority to a separate third party entity to act on your behalf in handling your affairs. The most common uses for powers of attorney is for a person to grant another individual control over some portion of their finances or their healthcare. It is important to note that a power of attorney can be as broad or as specific as the person granting the power wants it to be. For example, you could grant a person authority to handle all of your finances, or you could grant them authority to only deposit money on your behalf in to a specific bank account.

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You can generally set up powers of attorney to either be active immediately, or to not become active until some form of triggering event (i.e. your incognizance or incompetence). Powers of attorney are very versatile and useful for allowing others to act in your name.

Also, a power of attorney can be set up to be either durable or non-durable. A non-durable power of attorney is automatically revoked upon the grantor becoming incompetent or incognizant. A durable power of attorney remains in effect in the event that the grantor becomes incompetent or incognizant. Regardless, the grantor of a power of attorney, whether durable or non-durable, has the ability to revoke the power of attorney at any time.

So why use a non-durable versus a durable power of attorney? A non-durable power of attorney can insure that your designated attorney in fact (i.e. the grantee) does not take advantage of the granted power in the event that you become incognizant or incompetent (because the power of attorney is automatically taken away upon either of those two events occurring). However, if you trust the individual and you want them to continue handling your designated affairs even if you become incompetent or incognizant, then you can provide them with a durable power of attorney.

As stated above, the major purposes for which powers of attorney are utilized tend to be for either Financial or Medical purposes. Please see the following:

- **Financial Powers of Attorney** – A financial power of attorney allows a person (the principal) to name another individual or entity to make financial decisions on his/her behalf. The principal needs to make sure that whomever they grant this authority to is very trustworthy; depending on how much authority you grant the attorney in fact over your finances, they could have access to all of your money, property and other assets. Principal's often chose a close friend, family member or hire a professional institution to perform as an attorney in fact for a financial power of attorney.

- **Medical Powers of Attorney** – A medical power of attorney allows a person (the principal) to name another individual or entity to make medical decision on his/her behalf. Most medical powers of attorney are designed to not "trigger" until the principal is either incompetent or incognizant. As always, it is very important that you make sure that you trust whomever you grant this authority to.

Powers of attorney do not have to be granted simply for the purposes of handling your affairs at the end of your life. Powers of attorney can be utilized at any stage of your life to designate an individual as your attorney in fact for purposes of handling matters in your name. An example would be to perhaps provide a trusted business partner with the power to sign payroll on your behalf, allow an individual watching your child the authority to take him/her to the hospital if necessary, or to allow a family member to manage your medical requirements.

Health Care Directives

Commonly called a "living will," health care directives are an estate planning tool in which you provide instructions for medical providers to follow in the event you become terminally ill and incognizant. Generally, it will provide a statement as to if you want life sustaining medical treatment when you are seriously ill; a person will instruct as to if they want to continue being artificially provided nutrition and hydration when there is little chance of recovery from an incognizant state.

So what is the difference between a medical power of attorney and a health care directive? Primarily, a medical power of attorney requires that you appoint someone to oversee your medical treatment, but a health care directive is a direct statement to your medical providers as to how you want them to act in a specific situation.

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It is important to note that while health care directives are commonly called “living wills,” these are not actually a will and should not be considered to substitute for one. A health care directive is simply a legal document that can be prepared and utilized for purposes of providing an advance directive to medical providers for when you are in a deteriorating medical state.

Guardianship

A guardianship is not exactly as much a part of your estate plan as it is more a potential result of failing to have an estate plan put in place. In the event that you enter a state of incompetence or incognizance, and you do not have any affirmative plans set in place regarding your health care or finances, an interested party can bring to the attention of the Court your need for a guardian to oversee such matters. The interested party can be anyone from a family member to a State official that recognizes that you may require a guardian to be appointed to you. It is important to note that the Court sees guardianship as a last resort and favors the use of a power of attorney or other less restrictive alternatives if any are available.

Guardianships can also be appointed for children under the age of 18 as well. However, for purposes of this section, we are only discussing guardianships appointed to individuals who are incompetent or incognizant.

Three main types of guardianships would apply to a person found to be incompetent or incognizance; they are as follows:

- **Limited Guardianship** – also sometimes referred to as a Guardian Ad Litem, upon an interested party notifying the Court of a potential need for a guardian, the Court will appoint a person with limited guardianship to review the individual’s situation. The limited guardian will report back to the Court their findings and the Court will then determine if a more permanent individual needs to be appointed as guardian.

- **Guardianship of the Person** – somewhat like a medical power of attorney, a guardianship of the person is appointed for purposes of having a third party oversee an incompetent or incognizant person’s medical health needs.

- **Guardianship of the Estate** - somewhat like a financial power of attorney, a guardianship of the estate is appointed for purposes of having a third party oversee an incompetent of incognizant person’s finances.

While a guardianship is for the protection and benefit of the incompetent or incognizant person, sometimes said person might not believe that they require a guardian to be appointed to them. As mentioned above, the Courts are very reserved in their appointment of guardianship and will take in to account many factors in making this determination. One such factor they will take in to account is the individual’s wishes in regards to having a guardian appointed. While the Court may still decide that the person does require a guardian, that person may at the very least be able to suggest whom they would like to see appointed to them

Regardless, the best practice in regards to guardianships is to simply try and avoid them through the implementation of powers of attorney, health care directives and/or any other estate planning methods available.

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ITEMS AND INFORMATION CHECKLIST FOR PLANNING AN ESTATE

After having read through the above sections, you should somewhat have an idea as to what you and an attorney would need to review in order prepare an estate plan. That being said, there are several items we would suggest you consider before you meet with an attorney, and there are multiple documents we would advise that you bring with you.

The following is a non-comprehensive checklist of items to consider and documents to gather before you meet with your attorney. If you would like to schedule a free consultation with Nowakowski Legal PLLC to discuss your estate plan, please do not hesitate to contact our office.

Before gathering any and all documents for review, please note that all testamentary documentation and/or legal paperwork should remain in a safe, locked and fireproof location. Please only bring copies of such documentation for review by your attorney. The originals or main versions should remain in your safe location.

Documents and Information

The following are several documents and/or information you should attempt to gather and bring to any meeting you have with your attorney to discuss your estate planning:

Necessary Identifying Information

__ Have your full name, prior names, address, birth date and social security number available.

__ Have the same information available for any spouse or children you may have.

__ Have the full names and addresses for all beneficiaries you wish to have.

__ Information regarding any military services and veteran disability status if applicable.

__ Any information regarding any status or benefits you already retain that may affect your burial and/or funeral arrangements or which are designed to carry over after your death.

Prior Estate Planning Documentation

__ Copies of existing wills and any codicils (amendments) thereto.

__ Copies of existing trust documents.

__ Copies of documents evidencing valuation and transfers to trusts.

__ Copies of existing Powers of Attorney.

__ Copies of existing Health Care Directives.

__ Copies of any deeds, titles, or other documents necessary to show ownership in property.

__ Copies of Life Insurance Policies.

__ Copies of any Medical and/or Long Term Care Insurance Policies

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__ Description and values of any gifts made to individuals above the allotted gift tax exemption (currently $14,000.00 per individual).

__ List of properties or assets jointly owned.

__ List of any joint bank accounts.

__ Copies of any other documentation you previously had created and implemented for purposes of establishing an estate plan.

Inventory of Assets

__ Salary and Regular Income

__ Bank Accounts and their Individual Valuation

__ Safety deposit boxes, their location and their contents

__ Valuable Personal Assets (cars, boats, paintings, jewelry, etc.)

__ Real Estate

__ Business(es) you have ownership in

__ Stocks, Bonds and Mutual Funds

__ Pension Plans, Retirement Benefits, IRAs, Profit Sharing Plans

__ Annuities, Certificates of Deposit, Contracts Receivable, Promissory Notes held

__ Any other assets you may have that are of material or sentimental value

Inventory of Liabilities

__ Mortgages, Outstanding Lines of Credit and other Unsatisfied Loans

__ Credit Card Debt

__ Outstanding Judgments

__ Outstanding Liens

__ Potential debts due to being a co-signor

__ Contractual Debts

__ Unpaid Items Financed

__ Regular Monthly Payments

__ Leases and Rents

__ Any other debts outstanding.

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Considerations

The following are several items to consider prior to meeting with an attorney to create an estate plan:

__ Does your estate total or surpass the Federal Estate Tax Deduction (currently $5.45 Million)?

__ Do you have a spouse?

__ Do you have children?

__ Do you have any special wishes regarding your spouse and/or children?

__ In the event of you and your spouse's demise, who would you like appointed as a guardian for your children?

__ How many beneficiaries do you wish to leave your estate to?

__ Who are all the beneficiaries you wish to leave your estate to?

__ Do you have any special items of personal property you wish to leave to specific individuals?

__ Do you want to fully or partially try to avoid probate, or is it not a concern?

__ Do you have a wish to set up some form of a trust?

__ Do you have or want to set up any life insurance policies for family members?

__ Do you have any beneficiaries you fear leaving money to due to their poor money management?

__ Do you have any minor or adult children for whom you wish to have their inheritance managed?

__ Do you own any businesses?

__ Do you wish for the business to remain within your family, or would you prefer it sold as an asset?

__ Are you interested in having prepared any Powers of Attorney?

__ What situations would you like any Powers of Attorney to cover, and when would you want them to "trigger"?

__ Who would you be comfortable having a Power of Attorney?

__ Do you wish to have prepared a Health Care Directive in the event of failing health?

__ Do you have any specific wishes for your burial and/or funeral plans?

__ Prepare a written list of any questions or concerns you have that you wish to discuss with your attorney.

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CONCLUSION

We at Nowakowski Legal PLLC hope that this Estate Planning Start Up Guide was helpful in your journey toward understanding the importance of having an estate plan prepared. Should you have any questions or concerns regarding any legal matters surrounding the formation, development or ongoing maintenance of your estate plan, please do not hesitate to contact Nowakowski Legal PLLC.

Again, thank you for taking the time to read our Estate Planning Start Up Guide!