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Estate Planning Lets You Call the Shots

One of the best things you can do for your family is to plan your estate now. **Chapp Law Firm, P.C.** can work with you to create a will or trust that assures your family will be provided for if something happens to you. This article will give you some ideas on how you can be sure that your estate plan will carry out your wishes and distribute your property exactly as you want.

Statistics show that fewer than half of American adults have wills, and the percentages actually seem to have dropped in the past few years. If you're one of the ones who hasn't gotten around to it yet, you run the risk of dying **intestate**, which means that the state would step in to make the decisions that you didn't make.

When the State Decides

State law specifies how your property is to be divided if you don't have a will or trust. The specifics vary by state, but the principle is that the state will assume that you wanted a portion of your property to go to your spouse, a portion to your parents, and so on.

That may work if the state's assumptions happen to match yours, but probably they don't. Maybe you wanted to apportion the amounts differently, or give property to a nonrelative, or to a relative who is not in the immediate family (a favorite niece, for example). And maybe you wanted certain items—a car, a family heirloom, etc.—to go to certain people. None of this will happen if you don't leave directions.

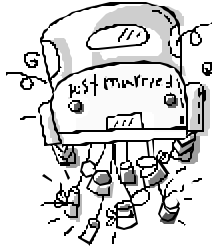
If you have minor children, your will can specify who is to be in charge of their upbringing. If you don't have a will, a court will have to decide, and that not only complicates the process but opens up the possibility that they may be placed in the care of someone you wouldn't have chosen.

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The Legal Side of Marriage

When you say, “I do”, you are making a personal commitment to another person. What you may not realize is that you are also agreeing to a battery of new legal rights and responsibilities. More than 1,000 rights and responsibilities are automatically accorded to married couples.



Marriage is a private bond between two people, but it is also an important legal institution.

Here’s a quick look at some of the things you agree to when you’re at the altar. If you have specific questions, your lawyer will have the answers.

✦ Family Law

Married couples have a variety of rights and responsibilities with respect to family issues. Many of these rights will only be relevant if the couple divorces or separates. For example, marriage en-titles a person to an equitable distribution of marital property upon divorce. (Most property that is acquired during a marriage is considered **marital** or **community property**.) Marriage also entitles a person to seek support (**alimony** or **maintenance**) in the event of a separation or divorce.



Real Estate

In some states you are eligible to own property with your spouse in **tenancy by the entirety**. In this form of ownership, which is traditionally only available to husbands and wives, each tenant effectively owns the entire estate. Neither can deal with the property independently of the other. The main advantage of this is that creditors of one spouse cannot force the sale of the home without the other spouse’s consent. In addition, when one spouse dies, the remaining spouse automatically becomes the owner of the entire property, regardless of what the will of the deceased spouse says.

Spouses also have **homestead rights**, which may protect the home from forced sale for collection of debts or may grant favorable property tax treatment.

✦ Taxes

Marriage gives you and your spouse the right to file jointly, although you can file separately if you prefer. Filing jointly is likely to benefit couples if one spouse has a high income and the other spouse has a low income.

✦ Health Care Laws

If you are married, you automatically have the right to visit your spouse in hospital if he or she is injured. It’s easy to take this right for granted—but if you are one half of an unmarried couple, such access could be denied.

If one spouse becomes incapacitated and can no longer make medical decisions, a court will usually name the other spouse as guardian or conservator to watch over his or her affairs. If the incapacitated person is unmarried, the court may name the adult children, siblings, or parents as guardians.

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Finally, if you don't have a will or trust, you'll probably complicate the whole process of **probating your estate** (paying debts and taxes, distributing bequests, and wrapping up your affairs). You open up the very real possibility of increased expense and delays in distributing your property, both of which could be harmful to your family.

When You Decide

There's no set formula for what goes into a will or trust. **Chapp Law Firm, P.C.** can discuss what works for your situation in planning your estate.

Here are some suggestions on how to handle the more common clauses of a basic will or trust, assuming that the trust contains all or most of your property. This list is far from complete, but it will help you begin to plan.

Gifts of Property

The core of most wills or trusts is the section where you specify which recipients are to receive your property. Be sure to carefully identify the recipients, including their addresses and relationship to you—the last thing you want is confusion about who is to receive a gift.

Be sure to anticipate changes that might take place between when you write the document and when it comes into effect. What if one of your beneficiaries dies before you? Do you want that person's gift to go to his heirs, or to someone else you specify? Your will or trust can handle either alternative—but your lawyer has to know what your wishes are.

And try to anticipate any confusion that might occur because of how you describe the gifts you're making. For example, if the specific item of property might change between the time you write the document and the time you die, you might want to be general in your phrasing. Don't specify that you're giving someone 500 shares of a particular stock (you may sell it before you die and buy something else) but rather "my stock portfolio," or a specified percentage of it, or a dollar amount of the stock you own at death.

Remember also that your property may include intangible assets like insurance policies, bank accounts, certain employee benefits, and stock options. Some of these may pass outside of your will or trust, because of how they are held (i.e., if held in **joint tenancy with right of survivorship**, the property will pass automatically to the other owner on your death). Some may pass through **beneficiary designations** (i.e.,

employment benefits that go to your spouse). But some may pass through your will or trust. It's important for you and your lawyer to have a complete list of all the property you own and coordinate how all of it is to be passed.

You can save on taxes by using gifts wisely. This section of your will or trust can be used to give gifts to institutions and charities as well as to people.

Gifts of Real Estate

Most people prefer that their spouses receive the family home. If it isn't held in joint tenancy, you should have instructions about what will happen to it in your will or trust.

If you die before you've paid off the mortgage on your house, your estate will normally have to pay it off. If you're afraid this will drain the estate, or if you want the recipient of the house to keep paying on the mortgage, you must specify that in your will or trust.

Executors/Trustees

Your will should designate an **executor** and a successor in case he or she is unable to serve. (Your trust should do the same regarding its **trustee**.) It helps to spell out certain powers the executor can have in dealing with your estate: to buy, lease, sell and mortgage real estate; to borrow and lend money; to exercise various tax options. Giving the executor this kind of flexibility can save months of delay and many dollars by allowing him or her to cope with unanticipated situations.

Estate Planning Continued **Residuary Clauses**

This is one of the most crucial parts of a will, covering all the assets not specifically disposed of in the will or elsewhere. This is important because you may accumulate assets after you write your will, and if you haven't specifically given an asset to someone, it won't pass through the will. A **residuary clause** can give all such property to one or more beneficiaries. (If your will omits a residuary clause, the assets not left specifically to anyone would pass on through the intestate succession laws, sometimes after long delays and extensive court involvement.)

Will or Trust?

You probably have a pretty good idea what a will does. In legal terms, it's a revocable document—which means that it can be altered as circumstances or your mind change—by which you transfer your property at death and designate someone to carry out your wishes. Wills have been around at least since the time of the ancient Egyptians.

Trusts are newer, and are gaining in popularity. Like a will, they permit you to dispose of your property at death, but they have a number of advantages that might be important to you. For example, bypass trusts are very useful in estate planning to lower taxes.

Revocable living trusts may not have tax advantages, but are helpful in several ways.

They:

- Are relatively easy to set up and change (wills have more formalities)
- Enable you to eliminate or minimize the probate process
- Protect your privacy (unlike wills, they usually require no public record)
- Help you manage your affairs while living (a trustee can take care of your investments and other property if you're incapacitated, or if you simply prefer to let someone else do it)
- Permit you to direct how your property is to be distributed for a number of years (unlike wills, which make a gift of property at one time, trusts can last many years and enable your wishes regarding how your property is distributed to continue long after you die)

Chapp Law Firm, P.C. can help you assess whether a living trust or some other trust is appropriate for your circumstances.

Legal Update

Many States Now Allow Dynasty Trusts

Charitable trusts can last indefinitely—like the trusts that fund the Rhodes Scholarships and Pulitzer Prizes—but it used to be that private trusts (trusts set up to benefit private beneficiaries) could be no longer than the life of a person alive at the time the trust was created, plus twenty-one years. This provision—known as **the rule against perpetuities**—effectively limited trusts to around 100 years.

In a growing number of states, the law now permits you to set up trusts that can last hundreds of years, if not indefinitely. That may permit you to avoid estate tax on the money as it passes from generation to generation, shelter the money from creditors (in lawsuits, bankruptcy, or divorce), and benefit your descendants for many generations.

Check with **Chapp Law Firm, P.C.** to see if such trusts are available in your state. You may also be able to establish a trust in another state that has no rule against perpetuities, even if yours does.

Testamentary Trusts

You can set up a trust in your will (**a testamentary trust**), or have your will direct funds from your estate into a trust you had previously established (your will would then be a **pourover will**). You would normally do so in a separate clause in your will.

Chapp Law Firm, P.C. can help you assess whether a living trust or some other trust is appropriate for your circumstances.

† **Wills and Estates**

If you are unmarried and you die without a will, your property is distributed in accordance with state intestacy laws, which distribute property to your family. If you have a partner, then he or she could receive nothing, even if you have been living together for years. On the other hand, if you're married and you die without a will, the state intestacy laws give your spouse rights to your property.

If you're married, your spouse can't disinherit you, no matter what he or she says in a will—you're entitled to a share of the estate. Marriage also gives you preferential status to be named guardian or executor.

† **Government Benefits**

The moment you marry, you have rights to certain government benefits via your spouse, including survivor benefits under Social Security and a broad range of military benefits if your spouse is in the military.

† **Private Sector Benefits**

If you are married, you may be entitled to health insurance through your spouse's employer. You may also be entitled to the right to take sick-leave to care for your spouse or child. And as a minor money-saving bonus, you may be eligible for family memberships at gyms, clubs, and other organizations, as well as receiving family rates for auto insurance.

† **Other Rights**

There are many other rights you may be entitled to if you are married, across a variety of legal areas. If your spouse is killed, you may have the right to sue a third person for **wrongful death**. If your spouse is injured, you may have the right to sue for **loss of consortium**. Marriage can give spouses the right to immigrate. And if one spouse is involved in criminal activities, the other spouse cannot be compelled to testify against him or her. If one spouse ends up in jail anyway, the other will have the consolation of visiting rights.

† **Sidebar: Domestic Partnerships and Civil Unions**

If a couple is unmarried, each person must do a lot of additional paperwork—from writing a will to drafting powers of attorney for health care—to have the same rights as a married person. And there are some rights that married people are entitled to, such as the right to government benefits through their spouse, that unmarried couples cannot receive, no matter how long they have been together.

Some state and local governments allow persons of the same sex (and in some jurisdictions, persons of different sex) to register as domestic partners. The benefits and rights that arise from a domestic partnership vary from jurisdiction to jurisdiction. Common rights include eligibility for family health insurance, sick-leave to care for a family member or partner, bereavement leave, rights to visit a partner in the hospital, and the right to make health care decisions for an incapacitated partner. In Vermont, a law enabling same sex couples to enter into civil unions extends to lesbian and gay couples the effect of every Vermont law, regulation, and court precedent in the state that applies to married couples.

Contracts for Beginners



Whether you're buying a car, renovating your home, or leasing property for your small business, you can be sure you'll need a contract. Contracts are essential in all of these situations and more for two very good reasons. First, you need to set out the details of the agreement you've reached with the other party. A contract tells everyone what the agreement is—and that includes you, the person you're making the contract with, and third parties, including lawyers and courts. Second, you need a contract to state what happens when things go wrong, or if circumstances change. Ultimately—and this is the way lawyers approach contracts—if you wind up in court, the contract tells the court what you and the other party agreed to, and the court will hold you to that agreement.

What Goes in a Contract?

Contracts can be very long, dense documents. They look like this for a reason: contracts should capture every piece of relevant information about the transaction. For example, imagine a contract dealing with home renovation. The contract would obviously specify the work to be done (for example, turn that little bathroom next to the hall closet into a big bathroom with new plumbing.) It would also specify the amount to be paid, and the completion date. But in addition, a good contract would deal with warranties—that is, guarantees that the work will be done in a workmanlike manner. It might deal with change orders—that is, what happens if you make changes during the construction process. It should deal with insurance, and certify that your contractor has workers' compensation insurance. It should allocate responsibility for arranging permits and inspections. And it should include language about who is to pay attorneys' fees and litigation costs in the event of a dispute. With all these clauses (and many others), a contract for a fairly simple home renovation project might run to ten pages or more.

Remember that the purpose of the contract is to define exactly what the agreement is, and to protect yourself if things go sour. The more vagueness there is in the contract, the less understanding there is between you and the other party, and the greater the likelihood that the agreement will fall apart. The best contracts are concise, precise, and cover every eventuality.

Negotiating a Contract

There is no such thing as a “standard contract.” Every contract is subject to negotiation, and any contract can be changed, annotated, or rewritten. If a person flat out refuses to negotiate on a contract, you may want to seriously consider walking away from the deal.

Bear in mind that if the other party has drafted the contract, or uses a pre-printed form that is “standard” in this kind of transaction, the contract he or she slides across the table has not been written with your best interests in mind. There's nothing dishonest or even shady about that. Contracts are about protection and leverage, and the person who writes the contract is going to give himself all the protection the law allows. Work with your lawyer to go through the contract and identify the terms you will agree to, and the terms that you want to negotiate.



When you are changing a contract as a result of negotiation, you can simply cross out language that you don't agree on, and annotate terms that you wish to change. You can add a rider of additional terms. Make sure both parties initial and date any changes.

Oral Contracts

An **oral contract** is any contract that is not in writing. For example, if a person sells you a second hand car, you agree on a cost, and you shake on it, you have created an oral contract.

An oral contract is a bad idea, period. Don't do it. Get the contract in writing. And if you have a written contract, don't make any additional agreements orally.

Here's why. First of all, there's the law. Some states still rigidly enforce the **Statute of Frauds**, an old common law rule that any agreement having anything to do with real property (land) must be in writing. If it's not in writing, the courts will not even bother to decide who's right; there simply is no valid contract.

The second legal issue involves the **parol evidence rule**, which says (roughly) that the written agreement signed by the parties is the entire agreement. If you have a written contract, but you agree to a change orally and problems

arise, you run into the parol evidence rule. Any oral agreements you and the other party have reached will not be considered as part of the contract. If you agree on anything that's not covered in the contract, add it to the written contract.

The third issue is a matter of evidence. With a written contract, the proof of the terms of the agreement is right there, on paper. With an oral contract, the proof is what you remember about the agreement versus what the other party remembers about the agreement. Even honest people can have different ideas of what terms were agreed to.

The fourth issue is a practical one. Think about how many issues are covered in a contract for the simple home renovation used as an example above. It is very unlikely that someone making an oral contract will be able to cover all of these issues in sufficient detail.

Signing the Contract

What should you do when the negotiations are over, a written contract is drawn up, and the person you're negotiating with asks you to sign on the dotted line? First, you should read the contract. Make sure that everything you agreed to orally is included in the contract. Query anything you don't understand. And, if a substantial amount of money is involved, it's a good idea to run the contract past your lawyer.

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We are recommending with emphasis, that you have Deeds and Medical Durable Power of Attorney and other estate plan documents reviewed before the end of the year. There have been new Michigan statutes and case law regarding Property Tax Caps, Medical Durable Power of Attorney and Living Will. Please contact our office to have these documents reviewed.

Below for your information is a list of practice areas that our firm handles. If we can be of any assistance to you, please call our office.

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