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INTRODUCTION

This pamphlet is designed to give me, as your attorney, your complete financial and family picture. Obviously, all the information provided is confidential in nature and subject to the attorney/client privilege. The information you furnish me will assist me in recommending to you an estate plan that will:

(1) Accomplish your objectives for your family, and

(2) Minimize the tax burden to you and your family.

The first part of this information booklet presents answers to some of the questions my clients frequently ask me. Finally, there is a detailed questionnaire regarding the financial aspects of your estate. I recognize that you may not be able to complete all of the answers prior to the conference. To the extent that you can furnish me the information, however, our conference will be much more meaningful. Moreover, the resulting savings in conference time will help reduce the cost of your estate plan.

PART ONE
QUESTIONS FREQUENTLY ASKED ABOUT ESTATE PLANNING

One way of introducing estate planning is to answer some questions clients frequently ask me. I believe that these questions and answers are important enough to include here, and I hope you find them informative.

What happens if I die without a will?

If you fail to plan your estate and die without a will, the law will create an estate plan for you. The entire system of "intestate" succession of "descent and distribution" is setforth by statute and is too complex for a detailed discussion here.

Briefly stated, however, adverse results can occur if you die without a will. The law prescribes both the persons to whom your property will pass and the division of your estate among those persons. The distributions provided by law are inflexible and may not satisfy your desires as to distribution of your estate. In addition, the amount to be distributed to your children will require a cumbersome and costly legal guardianship if the children are minors at the time of your death.

The problems of dying without a will are aggravated if a married couple owns a family business with fifty percent owned by each spouse as separate property. If one of the spouses dies without a will, the ownership interest of the deceased spouse will pass to the surviving spouse and minor children, and a legal guardianship will be required to manage the portion of the business interest that passes to the minor children. The surviving spouse will have the guardianship for the minor children as a "partner" in the

family business. In accordance with the requirements of a guardianship, the guardian may have to post a bond and make a detailed periodic accounting to a court for all business transactions.

If you die without a will and are survived by your spouse alone, leaving no children, not all of your estate will pass to your surviving spouse; part of your estate will pass to your parents. Again, such a division of your property may not accurately reflect your wishes.

If you die and are survived by your children only, leaving no surviving spouse, your entire estate will pass to your children. If they are minors, a conservatorship will be necessary to manage their property.

What happens if I have joint accounts with someone other than my spouse?

In Pennsylvania, joint accounts with a financial institution that includes a checking account, savings account, certificate of deposit, share account or other like arrangements, are governed under the Pennsylvania Multiple-Party Accounts Act, 20 Pa. C.S. 6301. That account may or may not have a designation of any right of survivorship. During the lifetime of the initial depositor, the joint account belongs to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent. If the account does indicate "any right of survivorship", and it can be shown that the account was not established for "convenience purposes only" then the balance of said account would pass to the surviving joint owner upon death of the other party. If the account had been opened as a joint account for more than one year and there were two parties on the account, then the inheritance tax would only be on fifty (50%) percent of the account balance. This asset is considered a non-probate asset and therefore, would not be governed by your Last Will and Testament. However, based on a number of Pennsylvania Superior Court cases, if you have a prior Will dividing your residuary estate among a number of parties and then open an account with a joint party with "right of survivorship" the Courts have held that same may not pass under the Multiple-Party Accounts Act but be still governed by your Will, depending on the circumstances. Therefore, a statement should be placed in your Will to cover your overall intent on any either previous or subsequently opened joint account indicating if it is your intent that the surviving joint owner receive same that the Will not disturb that joint account designation unless there is cohesion or fraud.

What is a personal representative?

Your personal representative is the person who will serve as the primary representative of your estate. You may be more familiar with the terms "executor" or "administrator" for such an individual.

What is "administration" of my estate?

Administration of an estate involves the collection of assets, payment of liabilities, and distribution of properties to the beneficiaries of heirs. Administration of an estate is conducted under some degree of court authority and supervision, but a personal representative named in a will can act with considerable autonomy.

Some of the factors that we will consider in determining which procedures or devices to use are: (1) the value of your estate subject to administration; (2) the applicable statute of limitations; (3) the degree of trust cooperation, and agreement among the beneficiaries and creditors of your estate; (4) your express wishes regarding administration, as stated in your will; (5) the complexities of the administration; (6) the degree of protection from liability needed by the successors or by the personal representative or both; and (7) proof of title to property requirements.

In general, I believe that the personal representatives chosen by you should be granted broad authority and should not be required to report to a court too frequently. Such an administration is less cumbersome and time consuming, and therefore is less expensive.

Is a handwritten will legally effective?

A handwritten will may be a valid holographic will if the signature and material provisions are in the handwriting of the testator. Such a will need not be witnessed or comply with the requirements for an attested will. The holographic will may be adequate, but such wills are a fruitful source of litigation, often because someone with no legal training has composed them.

Why should my will be more than one page long?

Your will could be drafted to be no longer than one page. Indeed, any lawyer could produce an abbreviated will for a relatively small fee.

The problem, however, is that such a will may not accomplish your objectives for your beneficiaries. I prefer to draft wills to cover all the various factual and legal situations that reasonably may be expected to arise.

Accordingly, the will that I draft for you may be a lengthy document. The burden to you of reviewing and approving a long will may be a blessing to your family when they later find that you have anticipated and resolved what might have been cumbersome problems.

What is community property?

Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington, Idaho and Wisconsin are community property states (or use a marital property regime very similar in effect to community property). These nine states use a marital property law scheme that differs from the other states, including Pennsylvania, that use the common law scheme. Under the community property system, marital property generally is deemed to be owned one-half by each spouse, regardless of the legal title to the property. In common law jurisdictions, legal title generally controls the ownership interests.

If you ever lived in a community property jurisdiction while married, I will perform a special review of your estate plan to account for the community property consequences.

How will my estate be taxed at my death?

Your estate may be subject to at least two and possibly three taxes: the federal estate tax, a state death tax (in almost all states) and possibly a generation-skipping transfer tax. This discussion will be confined to the federal estate tax.

The federal estate tax is based on the fair market value of your "gross estate" at the time of your death. At the option of your executor, an alternate valuation date of six months from the date of your death can be used.

Your gross estate will include the value of all the property in which you own an interest at the time of your death. Additionally, your gross estate may include property that you do not own, but over which you have retained or received certain rights or powers.

The estate tax scheme provides you with a "marital deduction" for bequests of property to your surviving spouse. The marital deduction in effect allows interspousal transfers to pass tax-free because they are deducted from the value of the gross estate. In order to qualify for the unlimited marital deduction, property must be transferred to the surviving spouse in a fashion that satisfies the technical requirements of the statute.

The federal estate tax and the federal gift tax have been combined ("unified") and one progressive set of rates applies. The rates increase as the cumulative total of taxable transfers increases. A unified credit (now called the applicable exclusion amount) against the gift or estate tax permits the tax-free transfer of prescribed amounts of property. As a result of passage of the Economic Growth and Tax Relief Reconciliation Act of 2001, signed into law on June 7, 2001, the unified credit/applicable exclusion amount will gradually increase through the year 2010, while the highest estate and gift tax rate will decrease at the same time. In the year 2010, there will be no federal estate taxes; however, effective 2011, the estate tax law reverts back to a $1,000,000.00 unified credit exemption and a maximum tax rate of 55%. The following is a breakdown of the increased applicable exclusion amount and the highest estate and gift tax rates:

	Estate Tax Applicable Exclusion Amt.	Highest Estate & Gift Tax Rate
Death occurs in 2009:	$3,500,000.00	45%
Death occurs in 2010:	N/A, tax is repealed	Top Ind. Income Tax Rate (Gift Tax Only)
Death occurs in 2011 & thereafter:	$5,000,000.00	35%

The operation of the unified credit may shelter a sizable portion of your estate from the estate tax. Taxable estates under the exclusion amount escape tax (again assuming no prior taxable gifts have been made). Estates over the exclusion amount are taxed at progressive rates up to the above annual highest tax rate.

The availability of the unlimited marital deduction will allow many estates to pass tax-free to the decedent's surviving spouse. While this result seems desirable initially, in some instances there may be tax savings from incurring some tax on the death of the first spouse. There are special rules where the surviving spouse is not a United States citizen.

Additionally, there exists a generation skipping tax, under the federal system, which is an additional levy on assets, in excess of a lifetime exemption amount, transferred to a person more than one generation removed from the donor. This tax will continue to be imposed at the highest estate tax rate then in effect. However, the exemption amount will rise in tandem with the estate tax exemption, and the generation skipping tax will expire when the estate tax does.

Pennsylvania has an Inheritance Tax and an Estate Tax (which will not be discussed, since same rarely applies to any particular estate). The Inheritance Tax percentage is based on the value of your taxable estate and the relationship of the beneficiary, as follows:

Surviving spouse:	0%
Lineal Heirs (parents, children)	4.5%
Transfer between decedent child under 21 to a parent:	0%
Brothers & Sisters:	12%
All others, including non-relatives:	15%
Charitable Bequests:	0%

Additionally, your estate will have to pay income taxes on earnings coming into the estate (interest or dividend income, business income, rental property income). Fiduciary Income Tax Returns are filed in both Federal and Pennsylvania governments for each year of estate income and a new tax identification number is obtained for the estate. Also, your final individual income tax returns will be filed by April 15 of the year following your death.

TRUSTS

What is a Trust?

A trust is a separate legal entity. One (the "trustee") holds property, usually real estate or investments, for the benefit of another (the "beneficiary"). The person who gives the property for the trust is known as the "donor", "settlor" or "grantor." The trustee holds legal title or interest and is responsible for managing, investing, and distributing the assets or property of the trust. The beneficiary holds an equitable or beneficial interest. A trust may have more than one trustee or beneficiary, including your minor children under a Testamentary Trust.

What are the benefits of establishing a Trust?

Depending on your situation, establishing a trust offers several advantages. Most well known is the advantage of avoiding probate. That is, in a trust that terminates with the death of the donor, any property in the trust prior to the donor's death passes immediately to the beneficiaries by the terms of the trust without requiring probate. This can save time and money for the beneficiaries. Certain trusts can also result in tax advantages both for the donor and the beneficiary. Or they may be used to protect property from creditors or to help the grantor qualify for Medicaid. Trusts are private documents and only those with a direct interest in the trust need know of trust assets and distribution. If well drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

What kinds of Trusts are there?

There are several types of trusts, some of the more common of which are discussed below:

Revocable Trust

A revocable trust is sometimes referred to as a "living" or "inter vivos" trust. Such a trust is created during the life of the donor rather than through a will. With a revocable trust, the donor maintains complete control over the trust and may amend, revoke, or terminate the trust at anytime. The donor is thus able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at anytime prior to death. The disadvantage of a revocable trust is that the revocable trust assets are countable to the donor for purposes of determining Medicaid eligibility. Additionally, all assets in a revocable trust are subject to death taxes.

Irrevocable Trust

An irrevocable trust is created during the life of the donor, who thereafter may not change or amend the trust. Any property placed into the trust may only be distributed by the trustee as provided for in the trust instrument itself. For instance, the donor can provide that he or she will receive income earned on the trust property. The irrevocable trust where the donor retains the right to income alone is a popular tool for Medicaid planning. If assets are transferred into an irrevocable trust beyond the look back periods established by the federal and state taxing authorities, the assets would be exempt from the imposition of death taxes.

Testamentary Trust

A testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the donor is probated. Although a testamentary trust will not avoid the need for probate and will become a public document, as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or provide for the care of a disabled child. (See supplemental needs trust.)

Supplemental Needs Trust

A supplemental needs trust can be created by the donor during life or be part of a will. Its purpose is to enable the donor to provide for the continuing care of a disabled spouse, child, relative, or friend. The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. Thereby, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid, and low-income housing.

How can I find out if I should have a Trust?

As with all estate planning, anyone considering a trust should contact an attorney who is skilled and experienced in this area.

What is a trustee?

A trustee is one to whom property is transferred for the benefit of someone else (the beneficiary).

I find that my new estate planning clients frequently misunderstand trusts. Many of our clients have heard a horror story about a trust, and the story often involves an impoverished widow-beneficiary who cannot extract enough money from the well-funded trust to maintain himself or herself.

Under present lawn, a trust that contains well drafted trustee powers and which uses a professional trustee can solve most problems, and it can assist in creating a suitable estate plan. A trust can be designed to produce almost any result desired by the client if the client gives the trustee sufficient funds with which to work. I usually recommend that trustees be given very broad and adaptable powers to provide flexibility for future events. The trustee should be empowered to do what is best for the beneficiary, without being curbed by inappropriate restrictions.

If a trust appears suitable for your estate plan, you will need to exercise care in the selection of a trustee. The family member who comes to mind as a logical first choice may prefer not to deal with the management of your properties. If a corporate trustee appears appropriate, I will suggest that you have a conference with the representative of your bank's trust department. Further, you should consider giving someone, such as your spouse or your professional advisors, the power to change trustees.

GUARDIANSHIP

What is guardianship?

Guardianship is a legal relationship whereby the Orphans' Court gives one person (the guardian) the power to make personal and/or financial decisions for another (the ward). A guardian may be appointed when an Orphans' Court determines that an individual is unable to care for himself or herself and his or her estate by reason of mental illness, mental retardation, or physical incapacity.

When is a guardianship appropriate?

Guardianship is appropriate when impaired judgment or capacity poses a major threat to a person's welfare. A medical evaluation by a licensed physician is necessary to establish the proposed ward's condition. However, only a court can determine the need for a guardian.

How can I become guardian?

Assuming that a physician is prepared to attest to the proposed ward's incompetence, a petition must be filed with the Orphans' Court requesting the appointment of a guardian. Two petitioners must sign the petition and the proposed guardian must file a bond with the court. Then the court directs that the heirs of the ward and the ward himself or herself receive notice of the filing of the petition for guardianship. The court sets a date by which anyone wishing to object may do so, including the proposed ward. Then a hearing is held where a judge decides whether a guardian should be appointed.

How long does this appointment last?

The appointment can last 90 days (a temporary appointment) or (a permanent appointment) it may last until the death of the ward or the guardian, until the ward is able to establish that he or she is competent, or until the guardian resigns or is removed by the Probate Court.

What authority does the guardian have?

Unless limited by the court, the guardian has total control over the finances (unless a separate Trust has been established) and the personal decisions of the ward. This includes deciding where the ward will live, determining how the ward's funds will be spent and making routine medical decisions for the ward. For medical decisions involving extraordinary medical care, the administration of anti-psychotic drugs, commitment to a mental health facility, or the sale of the ward's real estate, the guardian has to seek the approval of the court in a separate proceeding.

What are the responsibilities of the guardian?

In addition to those concerning authority to consent to medical treatment, the guardian must account carefully for all of the ward's income and any expenditure made on his or her behalf. This is accomplished by the guardian filing an inventory listing the ward's assets with the court as of the date of appointment and by filing annual accounts with the court detailing all the income and expenses the ward has. A final account must be filed when the guardianship is terminated. The guardian is liable for his or her acts until the court allows (approves) the account.

What are the alternatives to guardianship?

There are several less restrictive alternatives to guardianship. These include the durable powers of attorney, representative payees, trusts and health care proxies. Each of these options may avoid or delay the need for a guardian. These documents need to be executed before the individual is incapable of doing so due to mental impairment.

Who will rear my minor children after my death?

If you die leaving unmarried minor children, the other parent ordinarily will rear and support them. If the other parent is not living, however, your minor children will require a "guardian." A guardian is an individual who is appointed primarily to care for the person of a minor; the guardian's power over the minor's property is very restricted. You may appoint a guardian for your children in your will. If you fail to do so, the court will make the selection of a guardian. I recommend that you assume the responsibility for this important decision, rather than leaving it to a judge unfamiliar with your family situation.

Clients frequently tell me that they have chosen one of their parents as the guardian in the event of both clients' deaths, but in some situations I believe that such a selection is unwise. For example, assume that the youngest child of the clients is three years old and the client's parent is fifty-eight. When that child is fifteen (a time when child-adult communication can be difficult under the best of conditions), the grandparent will be seventy. Under these circumstances, another choice may be better for your child. You should look first to your contemporaries in your families (such as brothers, sisters, or cousins). If such family contemporaries are not appropriate, then consider friends with children in the same age range as yours.

If both parents die, your minor children may be left with substantial property interests that need management and protection. Because the guardian has only limited power over the minor's property, protective proceedings may be initiated in which the court will appoint a guardian of the estate to administer the children's property and affairs. A court appointed guardianship can be a cumbersome and expensive manner of dealing with the property of the minors, however, and it should be avoided. The guardianship can be avoided by property planning for the use of trusts or custodianships for minors.

If you have planned your estate properly, the guardian should not experience financial strain in raising your children. I usually suggest that upon the death of you and your spouse, a trust be established for your minor children. The trustee should be encouraged to make general distributions to assist the guardian, and the trustee can be authorized to provide funds to pay for any necessary expansion of the guardian's home.

Please list below your choices of a guardian (either one person, or a husband and wife together):

First Choice: _____
(Name)

_____
(Street Address)

_____
(City) (State) (Zip)

Second Choice: _____
(Name)

_____
(Street Address)

_____
(City) (State) (Zip)

DURABLE GENERAL
POWER OF ATTORNEY

What is a power of attorney?

A power of attorney is the grant of legal rights and powers by a person (the "principal") to another (the "agent" or "attorney-in-fact"). The agent, in effect, stands in the shoes of the principal and acts for him or her on financial and business matters. The agent can do whatever the principal may do—withdraw funds from bank accounts, trade stock, pay bills, cash checks—except as limited in the power of attorney. This does not mean that the agent can just take the principal's money and run. The agent must use the principal's finances as the principal would for his or her benefit.

When does the power of attorney take effect?

Unless the power of attorney is "springing," it takes effect as soon as the principal signs it. A "springing" power of attorney takes effect only when the event described in the instrument itself takes place. Typically, this is the incapacity of the principal as certified by one or more physicians.

Does the power of attorney take away a principal's rights?

No, absolutely not. Only a court can take away a principal's rights in a conservatorship or guardianship proceeding. An agent simply has the power to act along with the principal.

Can the principal change his or her mind?

Certainly. A principal may revoke a power of attorney at any time. All principal needs to do is send a letter to his or her agent telling them that their appointment has been revoked. From the moment the agent receives the letter, he or she can no longer act under the power of attorney.

Can an attorney-in-fact be held liable for his or her actions?

Yes, but only if he or she acts with willful misconduct or gross negligence.

Can an attorney-in-fact be compensated for his or her work?

Yes, if the principal has agreed to pay the agent. In general, the agent is entitled to "reasonable" compensation for his or her services. However, in most cases, the agent is a family member and does not expect to be paid. If an agent would like to be paid, it is best that he or she discuss this with the principal, agree on a reasonable rate of payment, and put that agreement in writing. That is the only way to avoid misunderstandings in the future.

What if there is more than one attorney-in-fact?

Depending on the wording of the power of attorney, you may or may not have to act together on all transactions. In most cases, when there are multiple agents they are appointed "severally," meaning that they can each act independently of one another. Nevertheless, it is important for them to communicate with one another to make certain that their actions are consistent.

Can the attorney-in-fact be fired?

Certainly. The principal may revoke the power of attorney at any time. All he or she needs to do is send the agent a letter to this effect. The appointment of a conservator or guardian does not immediately revoke the power of attorney. But the conservator or guardian, like the principal, has the power to revoke the power of attorney.

What kind of records should the agent keep?

It is very important that the agent keep good records of his or her actions under the power of attorney. That is the best way to be able to answer any questions anyone may raise. The most important rule to keep in mind is not to commingle the funds the agent is managing with his or her own money. Keep the accounts separate. The easiest way to keep records is to run all funds through a checking account. The checks will act as receipts and the checkbook register as a running account.

DURABLE GENERAL POWER OF ATTORNEY FOR DECISIONS REGARDING HEALTH CARE

What is a health care proxy?

A health care proxy is a document executed by a competent person (the principal) giving another person (the agent) the authority to make health care decisions for you if you are unable to communicate such decisions yourself.

Why have a health care proxy?

In case you ever become incapacitated, it is important that someone has the legal authority to communicate your wishes concerning medical treatment. This is true especially if you were to disagree with family members about your treatment. By executing a health care proxy, you ensure that the direction that you have given your agent will be carried out in the event of such disagreement.

Who should I appoint as my agent?

Since your agent is going to have the authority to make medical decisions for you in the event you are unable to make such decisions yourself, it should be a family member or friend that you trust will follow your wishes. Before executing a health care proxy, you should talk to the person that you want to name as your agent about your wishes concerning medical decisions, especially life-sustaining treatment.

Should I have a medical directive?

A medical directive provides your agent with instructions on what type of care you would like. If you wish, you may include a medical directive in your health care proxy. It may include specific instructions concerning the initiation or termination of life-sustaining treatment or a more broad statement granting general authority for all medical decisions that are important to you.

When does a health care proxy take effect?

A health care proxy takes effect only when you require medical treatment and are unable to communicate your wishes concerning your treatment.

What if I become able to communicate my own decisions?

If you become able to express your wishes at any time, you will be listened to and the health care proxy will have no effect.

Who should have a copy of my health care proxy?

Your agent should have the original document. You should have a copy and your physician should have a copy with your medical records.

How can I get a health care proxy?

Contact an attorney who is skilled and experienced in this area.

LIVING WILL

What is a Living Will?

In November 2006, Pennsylvania revised the Health Care Power of Attorney statute and enacted a Living Will statute, with both documents being interrelated. By it you are indicating your wishes relative to irrevocable terminal illness and whether you should be kept alive by medical technology or allowed to die with peace and dignity. Pennsylvania law requires that food and water must always be given to a pregnant woman. This document has moral overtones and certain religions have their own guidelines. Obviously you should communicate your feelings and wishes with your chosen health care agent.

How frequently should I review my estate plan?

As a general rule, I suggest that you contact me every four or five years for a conference to review your estate plan and to update the information in your permanent file. I also recommend that you contact me in the event of a dramatic change in your finances or in your family situation. For example, a substantial increase in your estate (through increased life insurance, inheritance, gifts, or successful investments) may create opportunities for tax savings, as well as necessitate further family financial planning. A divorce, of course, will re-open completely the matter of planning your estate. Likewise, do not hesitate to contact me anytime you have a question as to whether or not change in tax or other substantive laws may affect your estate plan.