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**ESTATE PLANNING**

The goal in estate planning is to get the maximum enjoyment and use of assets during lifetime, provide for continuity in the management of your affairs in the event of incapacity and at time of death, and facilitate the transfer of assets to the person(s) or entities desired on death while at the same time minimizing estate taxes and, possibly, avoiding probate. The use of any estate planning tools depends on your individual goals and objectives, size of estate, family dynamics, and taxation issues. Such planning is particularly important when a loved one with a disability who may be incapable of managing his/her affairs and/or is eligible for and receiving needs-based public benefits is to benefit from the estate. The following outline some of the basic tools of estate planning.

A **Health Care Power of Attorney** allows you to appoint a person, known as an agent or attorney-in-fact, to make medical or health care decisions for you if you become unable to make or communicate such decisions.

A **Living Will**, which can accompany a Health Care Power of Attorney, guides your agent or attorney-in-fact, or, if none, binds the medical provider as to what health care, for example, life sustaining treatment, you want or do not want if you cannot make your own health care or medical decisions.

A **Financial Power of Attorney** allows you to appoint a person, known as an agent or attorney-in-fact, to manage financial matters on your behalf. It can either give the agent or attorney-in-fact power to act as of the date of signing or upon incapacity. In Arizona, you must expressly provide the agent or attorney-in-fact with authority to make gifts of your estate if you wish for him or her to have such authority, and the provision must be separately initialed by both you and a witness. Also, if anyone other than you will derive any benefit from your estate, that must be clearly set forth and similarly executed.

A **Last Will & Testament** provides for distribution of property that is not already automatically conveyed upon death, such as assets with designated beneficiaries, assets with right of survivorship, "pay on death" or other similar designations, and trusts. With a will, Arizona law will not control disposition of your estate on death. At a minimum, a will should nominate a Personal Representative who will be responsible for administering your estate on death, nominate a Guardian for minor children and/or children who are disabled, nominate a Trustee for assets to be held in trust for minor children and/or

children who are disabled, as well as funds to be held in trust for tax planning purposes or for persons with special needs or who are otherwise unable to manage their affairs.

A **Revocable Living Trust** is an entity created by a trust agreement entered into by and between the “Trustor,” the individual(s) with whose assets the trust is funded, and the “Trustee,” the individual(s) who will be managing the trust, for the benefit of the “Beneficiary.” In most instances, the “Trustor,” “Trustee,” and “Beneficiary” are initially one and the same person. Such a trust is created during the Trustor’s lifetime and the trust agreement can be amended and revoked during his capacity and prior to death. Upon the Trustor’s death, the trust becomes irrevocable, that is, the terms of the trust agreement cannot be changed, and the Beneficiaries are no longer the Trustor, but his or her spouse or the Beneficiaries they have named within the agreement. Just as is the case with respect to a Last Will & Testament, a trust can continue beyond the death of the “Trustor” and be administered for the benefit of minor children or children who are disabled.

All assets “owned” by the trust avoid probate and, if a married couple has an otherwise taxable estate, the trust agreement can be drafted in such a way so as to avoid estate taxes. A trust also has the advantage of providing for continuity in administration of the trust estate upon incapacity by naming a Successor Trustee to manage the trust estate at that time. Trusts can also be made **irrevocable** at the time of their creation or anytime prior to death. The foregoing is recommended in limited instances as it results in the inability of the Trustor to make future changes to meet change in circumstances.

A **Non-Grantor** or **Third Party “Special Needs Trust”** may be alternatively established as a stand-alone trust. In other words, a Last Will & Testament or Revocable Living Trust, rather than contain such provisions therein, can name a separate trust as beneficiary and the estate pour over into such trust at time of death. A **Non-Grantor** or **Third Party “Special Needs Trust”** has the advantage of allowing funding of the trust during lifetime and by multiple sources, that is, persons other than the “Trustors.”