

The Importance of Estate Planning for All Phases of Life

Ruthanne Hedstrom Vos – Mathison & Vos , PLLC
Westwood Lutheran Church, May 15, 2024



Some Common Estate Planning Myths

COMMON ESTATE PLANNING MYTHS:

- Estate Planning is best done when you're seriously ill or dying
- Estate Planning is not needed if your family knows your wishes
- If you have a Will, you avoid Probate
- If you have a Power of Attorney document, you don't need a Will
- If you are a spouse, or parent, or child, you legally have the right to act on behalf of your spouse/child/parent for financial and health care matters

Legal Terms – Defined

- **Will:** A legal document that directs where a person's property should go after that person dies.
- **Living Trust:** Also called an inter-vivos trust, is an estate planning device that allows a person to transfer assets to one or more persons before and after they die
- **Estate:** All of the property owned by a person, including real estate and personal property
- **Probate:** The process of settling your estate after you die, including paying creditors and heirs, and validating a will (if there is one)
- **Personal Representative:** A person responsible for the administration of an estate. This includes paying creditors and heirs.
- **Beneficiary:** A person or entity designated to receive property under a will, a trust, or another financial asset

Legal Terms – Defined

- **Power of Attorney:** A legal agreement that authorizes someone to handle the financial matters of another person. This power ends at the principal's death.
- **Attorney-in-Fact:** A person who receives the powers allocated by a principal under a Power of Attorney document, such as a right to handle another person's financial matters
- **Health Care Directive:** A legal document that sets forth an individual's wishes regarding medical care and treatment, and who they choose to speak for them regarding these matters if they are unable to on their own
- **Health Care Agent:** Individual(s) named by the principal to act on their behalf under a Health Care Directive, in the event of incapacity or inability to make their own health care decisions

Powers of Attorney



- A Power of Attorney is a document that authorizes someone to act (sign) on your behalf regarding financial matters
- You are considered to be the “principal,” and the person to whom you assign the power is your “attorney-in-fact”
- You can name more than one attorney-in-fact to act together, independently, or in succession
- Powers of Attorney are required to be:
 - In writing
 - Signed by you in front of a Notary Public
 - Dated
 - Clear on what powers are granted
 - Clear regarding gifting to self by attorney-in-fact (yes/no)
 - Clear regarding accounting responsibilities by attorney-in-fact

Powers of Attorney

- You may limit the powers given
- Can specify an expiration date; otherwise expires at your death If you name your spouse as attorney-in-fact and divorce, ex-spouse’s authority is automatically terminated
- A Durable Power of Attorney continues to be effective if the Principal becomes incapacitated
- Any party refusing to accept the authority of an attorney-in-fact to exercise a power granted by a power of attorney validly executed and not revoked is liable to the principal, the principal’s heirs, assigns, and representative of the estate of the principal

What happens if I don't have a Power of Attorney?

- If you become incapacitated and you haven't prepared a Power of Attorney for financial matters, in order for someone to act on your behalf, a court proceeding for a Conservatorship is needed
- Your spouse, or your close relatives or close friends may petition the court for a Conservatorship to assist you in managing your financial affairs



Health Care Directives (Advance Directives)



What is a Health Care Directive?

- A health care directive is a written document that informs others of your health care wishes
- It allows you to name a person (or "agent") to make health care decisions for you if you are temporarily or permanently unable to do so for yourself

What are the requirements?

- Must be in writing and dated
- Must contain your name
- Be signed by you (or someone authorized to sign for you) when you have capacity to understand and communicate your health care wishes
- Signature must be notarized, or witnessed by two witnesses
- Must name an agent and/or health care instructions

Health Care Directives (Advance Directives)

What should I include in my Health Care Directive?

- The name of the person(s) you wish to designate to speak on your behalf regarding health care decisions if you are unable
- How to contact your agent(s) (address and phone number)
- Your goals, preferences, and values regarding your health care (*your agent(s) must follow your wishes, to the degree they know and are able*)
- Types of medical treatment you want/don't want
- Your desire to donate organs, tissues, or other body parts
- Your desire as to the disposition of your body at death (cremation, traditional burial, etc.)
- Any funeral arrangement preferences

Health Care Directives (Advance Directives)

What limits are there to my Health Care Directive?

- Your agent(s) must be at least 18 years of age
- Your agent cannot be your health care provider, unless your health care provider is a family member (or other stated reasons why your agent is your health care provider)
- Cannot request assisted suicide (in Minnesota)

When does my Health Care Directive take effect?

- Takes effect when properly executed (see Requirements)
- If properly executed, then takes effect when your health care provider determines that you are unable to make health care decisions about yourself

What happens if I don't have a Health Care Directive?



- If you don't have a Health Care Directive, you will still receive medical care, but your spouse or other family members will not have automatic authority ("proxy") to make health care decisions on your behalf if you are unable to
- Medical facilities vary in the degree to which they will involve others in health care decision making when there is no Health Care Directive (*remember the Terri Schiavo case in Florida*)
- In some cases, a court proceeding for a Guardianship are necessary in order to appoint an individual ("the guardian") to make health care decisions on your behalf
- A guardian may also make decisions where you (the "ward") will live

Will Basics

What is a Will?



- A will is a simple way to ensure that your money, property, and personal belongings will be distributed as you wish after your death.
- A will allows you to appoint a specific person or persons to handle your estate at your death.
- The law does not require you to have a will.
- If you die without a will, Minnesota inheritance laws control how your estate is divided.

Will Basics

What Rules Apply to Wills?

- You must be 18 or more years of age and have the capacity to make a will. You must also intend for the document to operate as a will.
- Capacity to make a will is defined in Minnesota as:
 - [t]he testator (will maker) must understand “the nature, situation, and extent of his property and the claims of others on his bounty or his remembrance,” and be able to hold these things in his mind long enough to form a rational judgment concerning them.



Will Basics

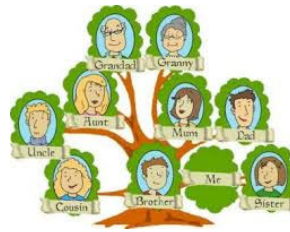
Basic Elements of a Will

- Basic Elements of a Will:
 - Your name;
 - Your place of residence;
 - Any specific gifts or assets to specific person(s);
 - Name of spouse, children, or other beneficiaries, such as charities or friends; alternate beneficiaries in the event a beneficiary predeceases you;
 - Name of a personal representative to manage the estate (formerly called “executor”);
 - Name of a guardian and alternate for minor children;
 - Establishment of any testamentary trusts and name of trustee(s) for testamentary trust(s).
 - Your signature; Witnesses’ signatures.

Will Basics

What information do I need to gather to prepare a will?

- Information needed to prepare a will:
 - Your objectives of how you want your assets to pass at your death;
 - An inventory of your current assets (real estate, financial accounts, retirement accounts, debts);
 - A list of your family members and other individuals or charities you wish to receive your assets at your death;
 - A family tree showing your spouse, children, grandchildren, stepchildren, etc.
 - Note any concerns you have about any of your beneficiaries and if they need special protection (minors, disabilities, issues handling money, etc.)



Will Basics

What does a Personal Representative do?



- Responsibilities of a Personal Representative:
 - Filing your will, an inventory of your assets, and other documents with the probate court, usually with the help of an attorney;
 - Paying valid debts to creditors;
 - Filing tax returns and paying any taxes due;
 - Notifying agencies and companies of the death;
 - Ordering death certificates;
 - Canceling credit cards, subscriptions, etc.;
 - Distributing your assets according to your will.

Will Basics

Can I change or update my will?



- A will is effective unless you change it or revoke (cancel) it, so it is important to review it periodically
- You may want to update or change your will if any of the following take place:
 - Your marital status changes
 - A child is born
 - The death of a beneficiary of your assets
 - You move to a different state
 - Your assets change significantly
 - Your selection for personal representative no longer represents your wishes or they are unavailable to act
 - A change in the law that affects your will.

What is Probate?



- Probate is the legal process to transfer assets held in your name alone at your death to the individuals who are to receive your assets either through your will (testate), or through the intestate statute provisions (if you don't have a will).



Questions?



MATHISON & VOS
ATTORNEYS AT LAW / PLLC

Ruthanne Hedstrom Vos
Attorney at Law
Office: 218-387-9191
Mobile: 612-910-2338
rvos@mathisonandvos.com

*Practicing in Grand Marais,
along the North Shore,
and throughout the Twin Cities Metro Area*

Thank you for attending!