

Essential Legal Documents

Estate and Incapacity Planning for
Individuals and Families

MINNESOTA
ELDER JUSTICE
CENTER

Do you need estate planning?

- ▶ Do you need to plan to minimize exposure to MN estate tax?
- ▶ Do you want to name a guardian for your children?
- ▶ Do you have a family member with special needs?
- ▶ Do you have real property in more than one state?
- ▶ Are there charitable objectives that are important to you family?

Do you need estate planning?

- ▶ Do you have children from a prior marriage?
- ▶ Do you have a parent you're supporting?
- ▶ Are you a business owner?
- ▶ Do your retirement plan and your estate plan lack coordination?
- ▶ Do you anticipate a need to protect assets in the event of catastrophic illness or long-term care costs?

Estate (and Incapacity) Planning Tools

The documents in an estate plan vary, but can include advance directives for health and financial directives to be used during your lifetime; and distribution instructions to be used after your death.

Estate and Incapacity Planning Tools

► Advance Directives



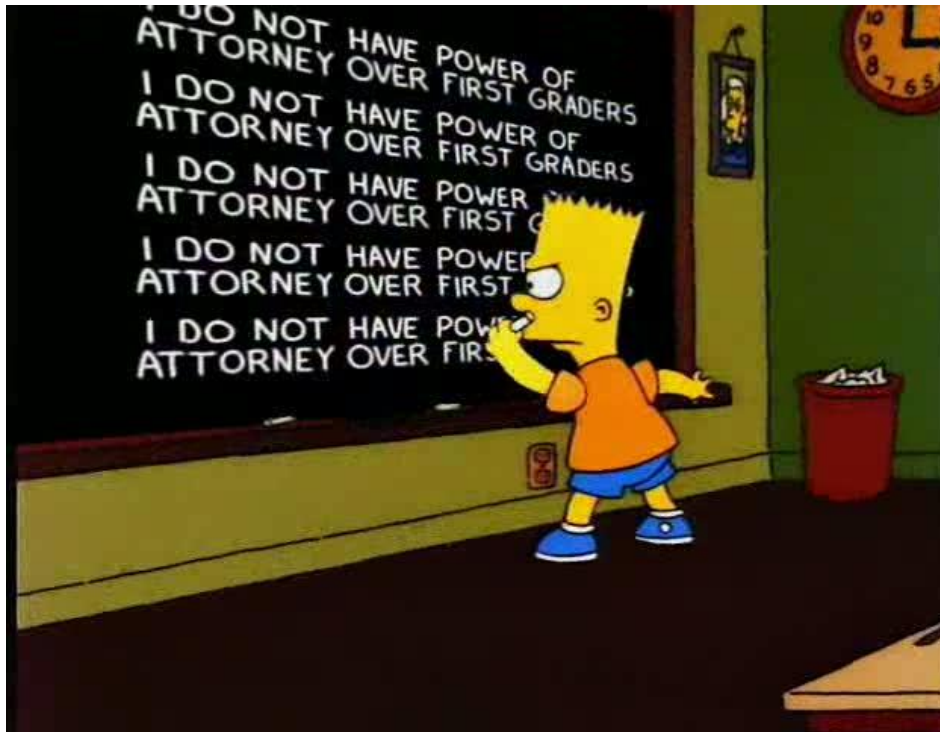
Estate and Incapacity Planning Tools

▶ Advance Directives

- ▶ Durable Power of Attorney
- ▶ Health Care Directive
 - ▶ MN Statute 145C.16
- ▶ DNR/DNI designation
- ▶ POLST
- ▶ Nomination of Guardian/Conservator
- ▶ Care/Comfort Elective

Estate and Incapacity Planning Tools

► Financial Directives



Estate and Incapacity Planning Tools

▶ Financial Directives

▶ Statutory Short Form Power of Attorney

- ▶ MN Statute 523.23

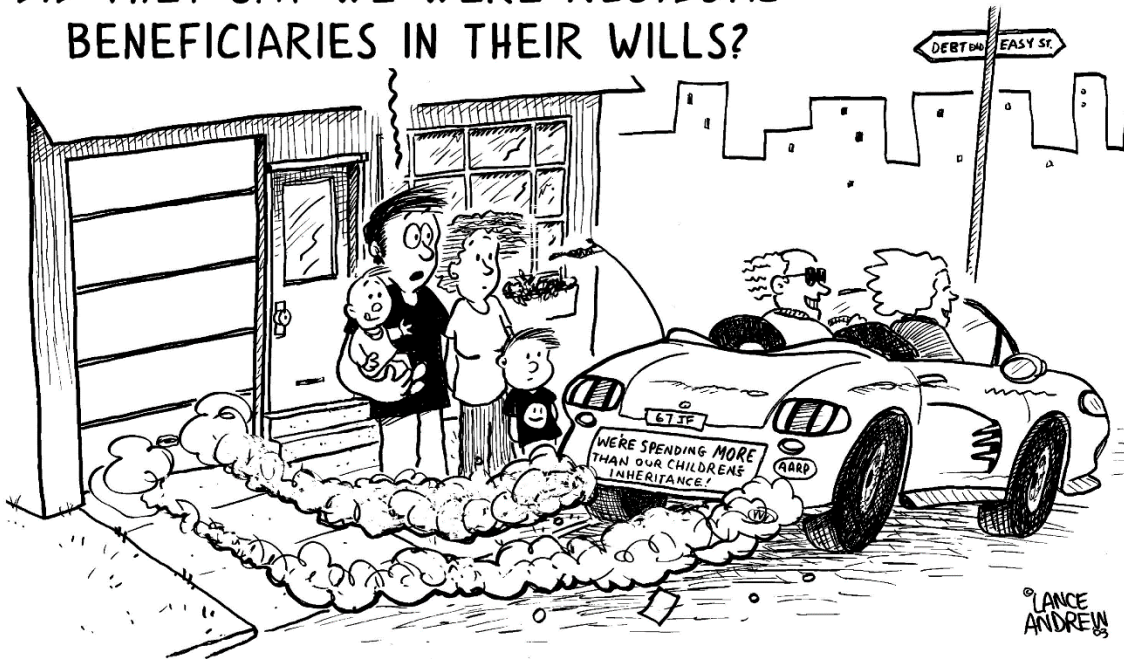
▶ Common Law Power of Attorney

▶ IRS Power of Attorney

Estate and Incapacity Planning Tools

► Distribution Plans

DID THEY SAY WE WERE *RESIDUAL*
BENEFICIARIES IN THEIR WILLS?



Estate and Incapacity Planning Tools

▶ Distribution Plans

- ▶ Wills
- ▶ Inter-Vivos (or Living) Revocable Trusts
- ▶ Testamentary Trusts
- ▶ Intestacy (the lack of a plan – or – the State of Minnesota's plan)

Probate and Estate Administration

- ▶ Will a probate proceeding be necessary?
 - ▶ Yes, if the decedent died owning assets in his or her own name (alone); AND
 - ▶ Those assets are in excess of \$50,000.

Probate and Estate Administration

- ▶ Non-probate assets:
 - ▶ Beneficiary designated assets
 - ▶ Jointly owned assets
 - ▶ Trust assets
- ▶ Probate assets:
 - ▶ Anything titled in the decedent's name alone

Probate and Estate Administration

▶ Wills

- ▶ Having a Will alone does not avoid a probate proceeding.
- ▶ However, having a Will can vastly simplify a probate administration if the Will is properly drafted and executed.

Wills

- ▶ Advantages of a Will:
 - ▶ Ease of establishment
 - ▶ Simplicity during life
 - ▶ Certainty for beneficiaries and others
 - ▶ No need to re-title assets
 - ▶ Simple document to name guardians for children
 - ▶ Note: probate is not a dark hole of bureaucracy if you properly plan

Wills

- ▶ Disadvantages of a Will:
 - ▶ Requires a probate administration
 - ▶ Court prescribed timeline
 - ▶ Probate is a public proceeding
 - ▶ Can be more expensive for heirs than a trust or beneficiary designation

Trusts

▶ Inter Vivos trusts

- ▶ Established during lifetime
 - ▶ Revocable
 - ▶ Irrevocable

▶ Testamentary trusts

- ▶ Established after death using a Will

Trusts

- ▶ Advantages of a Revocable Trust:
 - ▶ Maintain privacy of assets and family matters
 - ▶ Avoids a probate administration if assets properly titled
 - ▶ Ease of distribution to beneficiaries at death
 - ▶ Provides management of assets in the event of incapacity

Trusts

- ▶ Disadvantages of Revocable Trusts:
 - ▶ More expensive to establish
 - ▶ More expensive to administer
 - ▶ May not represent tax savings
 - ▶ Creditor claims not foreclosed
 - ▶ Requires initial re-titling and constant vigilance as to asset titling

Wills and Trusts: side-by-side

Wills:

- ▶ Can be used to plan for estate tax
- ▶ Only effective at death
- ▶ Public
- ▶ Involve complex legal rights
- ▶ Must go through probate administration
- ▶ Must be stored properly
- ▶ Affairs cease at testator's death

Trusts:

- ▶ Can be used to plan for estate tax
- ▶ Effective during life; distribute property at death
- ▶ Private
- ▶ Involve complex legal rights
- ▶ May not require probate
- ▶ Should be stored properly
- ▶ Continuity in affairs

Planning presents opportunities for discussion...

CAN'T WE TALK ABOUT SOMETHING MORE PLEASANT?

My parents and I never discussed **DEATH...**



Thank you for your attention!

Questions?