

1 **Basic Estate Planning**

Documents, Do's and Don'ts

2 **Joe Seagle**

- Firm in downtown Orlando
- 11-years in practice
- Practice focus:
 - Transactions
 - NOT litigation (personal injury, medical malpractice)
 - NOT criminal
 - Estate planning, real estate, and business formation and transactions
 - www.lawyers.com

3 **Legalese**

- Not endorsed by Entrust
 - Not an employee of Entrust
- Not your attorney
- General information only
- No confidentiality
 - No personal questions please
- No tax advice
- Please ask questions as needed

4 **Things to consider when choosing an attorney for your estate planning**

- Experience
- Practice Focus vs. Specialization
 - CPA/J.D.
 - Board Certified
- Ethics
 - Conflicts of Interest
 - Confidentiality
- Price
- Comfort

5 **Estate Planning Documents**

- Last Will & Testament
- Living Will
- Power of Attorney
- Healthcare Surrogate
- Living Trust
- Declaration of Preneed Guardians
 - Adults
 - Children

6 **Last Will & Testament**

- “Speaks” at death
 - Tells the world how you want your property distributed when you die
 - Until then, can change it as often as needed
- Simple wills have at least the following
 - Your name and residence
 - A reference to a “separate writing” about personal property
 - Specific gifts of property

7 **Last Will & Testament**

- The “Residue”
 - Everything else you’ve not already given away
- Naming the executor(s)
- Giving them power to do what they need to do
- Signature section
 - Two witnesses
 - Notary is not required but should have one
 - Saves time later

8 **But before you die, there’s a lot of living to do, and a lot can happen while you’re living**

9 **Living Will**

- “Speaks” while you’re still alive (but just barely)
- Tells doctors, family and friends just how far you want the doctors to go to keep you alive.
- Can be written or oral, so long as it is witnessed
- Since 1990, artificial food and water has been a “life-prolonging” procedure that a patient can direct to be withheld.
- May be very detailed or very simple

10 **Healthcare Surrogate**

- Gives a person authority to make healthcare related decisions on your behalf
 - Admission / Withdrawal from a healthcare facility;
 - Review of your medical records
 - Apply for medical benefits on your behalf
 - Enact your living will
 - Can withdraw food and water if that is all that is keeping you alive if your living will says so.
 - Just has to be signed and witnessed

11 **Power of Attorney**

- Two types:
 - General
 - Gives complete power over your financial affairs to another person while you’re alive
 - Limited
 - Gives only limited powers over certain specified financial affairs.
 - Seen often in real estate transactions
- Either can be “durable” and/or “springing”
 - Still effective even if you are incapacitated

- Can be written to only “spring” into effect if you are physically or mentally unable to handle your own affairs

12 Living Trusts

- Effective while you are alive, but also speak at your death.
 - Can be modified as often as desired during life
 - Used to protect assets from other liabilities
 - Used to speed up probate after death
 - Great for those who own real property outside the state or who have young children
 - May be revoked prior to death
 - Some types may be irrevocable or used for tax planning.

13 Pre-Need Guardianships

- For Adults
 - Names the person who will handle your bodily care and property in the event you are incapacitated
 - Must be in writing, signed and have two witnesses
 - Filed with the Clerk of Court
 - Without it, if you become incapacitated, a judge will appoint a guardian for you, and it may be someone who doesn’t know you.

14 Pre-Need Guardianships

- For Children under 18
 - Names the guardian for the person, property, or both of a child in the event both parents die or become incapacitated.
 - Signed before two witnesses
 - *Must* be filed with the Clerk of Court or it’s invalid.
 - A judge will still review it to make sure the named guardian is suitable, but will give weight to the parents’ wishes.

15 Some other documents

- Anatomical Gift
 - Can give only certain organs or entire body for use in medical or scientific uses
 - Usually handled on the drivers license, but also can be a separate document
- Cremation/Burial/Memorial Directives
- Pre-written obituary

16 Don’ts

- Estate planning is not a time for revenge
- Don’t put it off
- Don’t do it yourself
- Don’t forget to review the documents periodically
 - Moving to a new state, having children, opening new accounts, etc. are all life changes that can require an update of the documents

17 Do’s

- Choose fiduciaries carefully
 - Executor, trustee, guardian, power of attorney, and healthcare surrogate should be very carefully chosen
- Be specific in identifying personal property on the written memorandum with the will
- Keep the final original documents in a safe place with other important documents

- Discuss all of this with your spouse, partner and family members early on to avoid challenges and strife later
- Put it in writing

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