



PALADINO LEGAL GROUP P.C., L.L.O. • LEGAL NEWS YOU CAN USE

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A MESSAGE FROM THE FOUNDER

This is the first edition of PLG's Legal News That YOU Can Use. Paladino Legal Group's objective is to provide superior customer service and legal skills at a reasonable cost. To that end, as a firm we have decided to invest in our clients by publishing

a newsletter every quarter. I hope you find this inaugural edition helpful and insightful. If there is a legal topic that you want us to include in our next edition, please submit it via email to luke@paladinolegal.com.

Luke H. Paladino

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WHAT IS A LIVING TRUST AND SHOULD YOU HAVE ONE?

The Advantages and Disadvantages of Living Trusts

A Trust is a written agreement which allows individuals to exert more control over estate planning methods than a simple will. This article will discuss the brief purposes of a trust, the advantages, disadvantages and realities of a living trust.

A Trust which is set with the roles of grantor and trustee being performed by the same person allows for an easier transition of assets after the trustmaker's death. The trustmaker will often retain the right to revoke or amend the trust at any time during the grantor's life. In essence the grantor retains complete control over the trust assets during their life.

Advantages

Living Trusts avoid the costs associated with Probate. Probate is the court supervised process of settling all claims and distributing all monies after the death of an individual. If an individual has a living trust then the individual can usually avoid

personal representatives costs and probate attorney's fees. Every estate is different however, so it is difficult to state exactly how much will be saved in these costs with a living trust.

Two other major advantages of living trusts are that it can provide a vehicle to affect and instruct your beneficiaries long after your death and it can be a useful tool in the event the trustmaker becomes incapacitated. The trust can provide for the continuous management of the trust assets and the handling of the trustmaker's affairs.

Disadvantages

The primary disadvantage is the cost of forming and maintaining a living trust. Normally a trust can cost four times as much as a simple will in upfront attorneys fees. In addition there can be accounting fees and in some cases yearly trustee fees. The second main disadvantage of using a living trust is that all of the assets of the trust maker must be titled in the name of the

trust. This process, which is known as funding, can be time intensive and stressful for some individuals as it requires determining where the title is to all property and re-titling it in the name of the Trust. In addition, there can be costs in transferring title such as preparing deeds and the filing of documents with the state in association of transfer of title.

A widely held misconception in respect to living trusts is that they eliminate federal estate taxes that a will does not. This is incorrect. A living trust has no advantage over a will for federal estate tax purposes.

We encourage all of our clients to consider their estate plan. For some people that plan will include a living trust and for others a will is a perfect planning device.

Please contact us for more information about estate planning services and to determine if a living trust should be a part of your estate plan.

ADVANCE HEALTHCARE DIRECTIVES

A Must Have For Adults Of All Ages

Lately, the term “Advance Healthcare Directive” has been widely discussed in the media. This is the general term for two specific documents that are recognized in both Nebraska and Iowa, a Living Will and a Healthcare Power of Attorney. This article will discuss two well-known instances where the absence of these documents caused serious problems, the beneficial use of these two documents and some additional resources for more information.

In 1990, Nancy Cruzan, a Missouri woman in her 20’s was seriously injured in a car accident. At the direction of the state, Ms. Cruzan was kept alive without proof that her mind would ever recover to any level of functioning. Ms. Cruzan was treated at a state sponsored rehabilitation clinic and the state refused to follow the parents wishes in removing the life supporting mechanisms because there was no proof of Ms. Cruzan’s state intentions.

More recently, there is the case of Terri Shiavo a Florida woman in her 40’s who suffered an illness decades ago that left her in a vegetative state. Terri Shiavo’s husband repeatedly tried to have all life-sustaining equipment shut down but was denied from doing so by Mrs. Shiavo’s parents, who argued that she had never made her wishes clear and did not give her husband the legal authority to make decisions for her.

These cases are unfortunate incidents, but do demonstrate the value of healthcare directives. The problems and the disputes that became public

knowledge through the media could have easily been prevented if the affected individuals in the above scenarios had filled out some form of healthcare directives.

There are two advance healthcare directives that should be a part of any estate plan, a Living Will and a Durable Healthcare Power of Attorney. A Living Will is a document that specifies your wishes should you become incapacitated but still alive. This document states your specific wishes in case you are permanently unconscious or in the drawn out states of a fatal illness. You can obtain these forms from most hospitals and medical centers but it is a good idea to have an attorney help you draft a tailor made living will.

The next document that should be a part of your estate-planning portfolio is a durable Healthcare Power of Attorney. This document names a trusted person, which will be your health care agent and make sure that your specific wishes are carried out. I encourage people to indicate an alternate in case your first choice is unable to make those decisions for you. In most situations it is prudent to indicate individuals who reside near your principal residence and or workplace.

Once these documents have been drafted and executed per state requirements it is a good idea to make copies and give them to your primary physician, your area hospital, your healthcare agent and family members. This step will prevent future disagreements because all involved will be aware of

your wishes in the event of a sickness or accident.

The benefits of a living will and a healthcare power of attorney are innumerable. The greatest benefit is that your loved ones will know and have a signed document to refer to if you are ever the victim of a serious illness or accident. A serious illness can inflict serious emotional damage to the family of a victim. If the small steps of drafting these documents can prevent your family from experiencing even more suffering after you pass away, I believe it is your obligation to complete them and make them part of your estate plan.

For additional information:

Caring Conversations,
a booklet published by
the Center for
Practical Bioethics
www.midbio.org
(816) 221-1100

**The Consumers Tool
Kit for Health Care
Decision Making,**
published by the
American Bar Association
www.abanet.org/aging
(202) 662-8690

PERSONAL DISASTER PREPAREDNESS

Do you have a plan?

With the unfortunate events of Hurricanes Katrina and Rita still in our hearts and minds, the question remains, would we in the Midwest be ready for a similar situation caused by terrorists, natural disasters or some other unplanned emergency? Answer: Probably not. There are some simple things that can be done to make the emergency a little easier to stomach.

First, make disaster plan and put it in a binder. If you have several members of your family give everyone a responsibility. Getting a travel route, Stockpiling enough food and water to last 7-10 days, and making a disaster kit with emergency items would be a good start. The resources on the

internet for more information on disaster preparedness are very useful. The Federal Emergency Management Administration has a great website and checklists in several languages for the supplies that would be needed depending on the type of disaster. The FEMA website is www.fema.gov. In addition Walter Mossberg, the personal technology writer for the Wall Street Journal, has a really good article about emergency radios and emergency power sources for cell phones. His website is <http://ptech.wsj.com/archive.html> and it is the September 21 entry under the Mossberg Solution column.

In addition to having all the necessary

supplies, another good step is having all of your important personal and family documents in one place. Your birth certificates, marriage certificate, passports, wills, living wills, powers of attorney and any financial documents should be in an easily accessible place so that if you are forced from your home you can quickly access these items and bring these items with you.

The fast pace of American life can sometimes force individuals to sacrifice planning for other activities. Prepared individuals however, recognize the importance of planning and can find time to plan for their family's well being in the case of a disaster.

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We are pleased to announce that our website has just been launched. Please log on today to find information about our attorneys, contact information, practice areas and archived newsletters. In the future the site will contain local, regional and national legal news and will be a source of important information. Please surf the web today and land on paladinolegal.com, Paladino Legal Group's Home on the Web.

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