



ESTATE PLANNING PROGRAM



MY INSPIRATION

- Active duty legal assistance excludes the vast majority of veterans.
- Deployment lines for Afghanistan and Iraq.
- Families of Veterans in MVC Homes.
- Originally started at the MO Attorney General's Office in 2018 as part of the Military Legal Assistance Program.
- Services Available:
 - Wills/Simple Trusts
 - Powers of Attorney (Healthcare & Financial)
 - Advanced Directives
 - Beneficiary Deeds
- Based on the availability of volunteer attorneys and support staff.



PROGRAM IN ACTION

- Started in June of 2022.
- Clinics Held:
 - St. Charles
 - St. Louis (4x)
 - Branson (2x)
 - St. Joseph
 - Wentzville
 - Springfield (3x)
 - Joplin
 - Jefferson City/Columbia (Continuous)
 - Cape Girardeau
 - Poplar Bluff
 - Warrensburg
 - St. Robert



PROGRAM IN ACTION

- As of 2/14/23, served 415 Veterans and Spouses.
- Documents Produced:
 - 394 Wills/Trusts
 - 328 Advanced Directives
 - 378 Healthcare POAs
 - 357 Financial POAs
 - 50 Beneficiary Deeds
 - **Grand Total: 1507 documents**
- Estimated Savings to Veterans and Their Families: \$753,500.00



- This presentation is based on Missouri law
- We can only produce documents for Missouri residents
- Plan for the future, not now



WHY PLAN FOR THE END OF LIFE?

- **Benefits of Planning:**
 - Ensures your wishes are followed and that you are well cared for
 - Relieves your loved ones of the stress of making these decisions in a very difficult time
 - Allows you to orchestrate your exit from this world. What parting message(s) do you want to leave?



Testamentary Documents

- **Advanced Directive.**
 - Allows a person to express in writing who can make their healthcare decisions for them if incapacitated (Healthcare Agent) and/or what treatments they would prefer to receive or not to receive
 - Agent must be at least 18 years old and cannot be a doctor, an employee of a doctor, or an owner, operator or employee of a healthcare facility in which the person resides (except for relatives)
 - A Living Will is **NOT** the same thing as an Advanced Directive, and in some cases is inferior to an Advanced Directive – can only be effective when death is imminent and disallows withholding hydration/nutrition
 - May be a copy or the original



Testamentary Documents

- **Durable Power of Attorney for Health Care Choices.**
 - Allows a person to express in writing who can make their healthcare decisions for them if incapacitated (Healthcare Agent)
 - Agent can direct burial arrangements if that has not been directed in advance
 - Agent does **NOT** have to be the same person as the individual financial agent, but can be
 - Agent must be willing to serve, at least 18 years old and cannot be a doctor, an employee of a doctor, or an owner, operator or employee of a healthcare facility in which the person resides (except for relatives)
 - Two doctors must agree that the individual is incapacitated unless otherwise specified
 - Copies are acceptable



Testamentary Documents

- Health Care Choices Directive.
 - Allows a person to express in writing whether or not they want their life extended by medical treatment
 - Can be a tremendous relief to one's family to not have to make these choices
 - Directive must be followed by health care providers unless it calls for the commission of a crime
 - Health care providers who do not wish to follow the Directive must assist the individual in transferring to another facility that will follow it
 - Remains in effect unless specifically cancelled, or the individual dies
 - Copies are acceptable



Testamentary Documents

- **Living Will.**
 - Allows a person to direct health care providers to withhold or withdraw medical treatment under certain circumstances – can be a tremendous relief to one’s family
 - Creator must be at least 18 years of age, and death must be imminent in the absence of medical care. It **CANNOT** direct withdrawal of hydration or nutrition
 - Copies are acceptable
 - **Must state:** “I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition, it is my desire that my dying not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. It is not my intent to authorize affirmative or deliberate acts or omissions to shorten my life, rather only to permit the natural process of dying.”



Testamentary Documents

- **Power of Attorney.**
 - Allows a person to appoint another person (attorney in fact) in writing to handle their financial and business affairs
 - Can be effective immediately, upon the occurrence of a specific event (springing), and/or can remain effective even when the individual becomes incompetent (durable)
 - Must be in writing, clearly identify the person making the POA and the agent, and state the power(s) being granted (inclusion of HIPAA authorization is recommended)
 - Does **NOT** have to be accepted by institutions (**some will not accept them**)
 - Copies are acceptable.
 - **CANNOT** grant the power to:
 - Make, publish, declare, amend or revoke a will or a living will
 - Require the creator to act or not act against his/her will
 - Act in a manner forbidden for the creator to act



Testamentary Documents: What if there are none?

- **Guardianship and Conservatorship.**
 - Court-appointed person to handle the financial affairs of another person (conservator) or to manage another person's care (guardian)
 - Can be the same person for both roles, but does not have to be
 - Can be both a guardian and a conservator, or just one or the other
 - Entails paying court fees, an attorney and is obviously not a quick procedure
 - An attorney is appointed to advocate for the best interests of the incapacitated person (ward)
 - If a fit and willing relative cannot be found to serve, the court will appoint the local public administrator



Testamentary Documents

- *What Makes a Good Power of Attorney/Agent/Personal Representative?*
 - Must be an adult willing to serve
 - Trustworthy to follow your wishes
 - Can be relied upon to make tough decisions under stress conditions (Decisiveness)
 - Prudent
 - Intelligent (**NOT** necessarily educated)
 - Local or can travel as needed
 - If appointing different people for different tasks, it is recommended that you think through how those task might overlap or interact with one another
 - It is **NOT** recommended that you appoint more than one person
 - Successors are fine and are recommended



Testamentary Documents

- Wills.
 - Allows a person to express in writing their wishes as to who will receive their property and assets after they die
 - Allows a person to appoint someone (personal representative) to execute their will and ensure their final wishes are carried out
 - State law dictates property/asset distribution in the absence of a will (see next slide)
 - Very important for those with children (appointment of a guardian)
 - May cut the costs of administering the estate because less hearings will be required and you can direct that no bond be required
 - Can minimize state and federal tax implications
 - Those with substantial estates (valued in the millions) should seriously consider seeing an estate planner



Testamentary Documents

- Intestate Succession in Missouri.
 - Claims against the estate
 - Surviving spouse
 - Everything, or
 - $\frac{1}{2}$ if surviving children, or
 - $\frac{1}{2} + \$20,000$ if surviving children are also the spouse's children
 - Children and grandchildren in equal shares
 - Decedent's surviving father, mother, brothers and sisters in equal shares
 - Decedent's surviving grandfather, grandmother, uncles, aunts and cousins
 - The State of Missouri



Testamentary Documents

- Wills.
 - Creator must be at least 18 years of age, competent and understand the nature of what they are doing in creating the will
 - Must be signed in the presence of two (2) adult, disinterested witnesses and a notary public. Copies are **NOT** acceptable. May be handwritten
 - Pen and ink changes are **NOT** acceptable
 - Spouses **CANNOT** be completely disinherited; former spouses are automatically disinherited
 - Children **CAN** be disinherited, but it must be specific
 - Stepchildren and adopted children **DO NOT** inherit unless the will specifically states that they do
 - Can provide burial details or anatomical gifts, but this is not recommended



Testamentary Documents

- Wills: Options
- Talk to the drafter about your goals so they will know what options are appropriate for you
 - Everything in one pot (residuary) and divided or not
 - Specific gifts to specific people + residuary
 - Specific pieces of property and/or cash gifts
 - Real estate separated from residuary
 - Charitable gifts
 - Contingent gifts
 - Pet trusts
 - Per stirpes vs. per capita inheritance
 - Alternate beneficiaries beyond primary beneficiaries



Testamentary Documents

- Wills. *Probate vs. Nonprobate Estate*
 - Probate Estate
 - Property in the person's name only, with no contractual beneficiary designation, or property that would pass in accordance with State law, but for the Will
 - Nonprobate Estate (Chapter 461, RSMo)
 - Property that passes due to some sort of beneficiary designation or by operation of law
 - E.g., jointly-owned property with a right of survivorship; bank account with a beneficiary clause; insurance proceeds; vehicle/real estate title with right of survivorship; etc.



Testamentary Documents

- *Is an Attorney Really Required?*
 - “Small Estate Affidavit”
 - Can be used when a decedent leaves a probate estate valued at \$40,000 or less and no estate has been opened in probate court
 - The affidavit cannot be used until at least 30 days after decedent has passed away
 - Allows a person entitled to property owned by the decedent to obtain and distribute the property without having to go through the complicated process of probating the estate
 - Filed in the county in which the decedent resided
 - Check with your county’s circuit clerk’s office as they often have forms which are required to be used



Testamentary Documents

- Wills. *Traditional Will vs. Trusts*
 - Traditional Will
 - Transfers property immediately upon the court's order
 - Trust
 - Is **NOT** a will substitute
 - Property is designated (ownership interest) for distribution to specific individual(s) upon death, but may remain available to the owner until he/she dies
 - Upon death, the property is transferred to a trustee to be held and distributed in accordance with the provisions of the trust
 - Shields assets from eligibility determinations in some government benefit programs; great way of providing for those with questionable judgment; can shield some assets from taxation
 - Can be distributed in lump sum, or in percentages over time



Testamentary Documents

- Testamentary Documents Executed Outside of Missouri.
§474.097 RSMo
 - Are valid in Missouri if they are valid in the state in which they were created
 - Caution: Private institutions are not legally required to accept any testamentary document
 - Courts and government agencies normally will accept them
 - Recommendation: Create new testamentary documents under Missouri law if at all possible



Testamentary Documents

- Safeguarding Testamentary Documents.
 - Damage may invalidate your will
 - Wills - copies are **NOT** acceptable
 - Other Testamentary Documents - copies **ARE** acceptable
 - Safeguard from the elements (fire, tornados, etc.)
 - Do **NOT** travel with the original copy of your will
 - Make sure people know where the original will is and can access it
 - Copies of your will should be labeled as copies on each page
 - Testamentary documents should be periodically reviewed and updated as needed
 - Testamentary documents and all copies should be destroyed once replaced
 - Recommendation: create an inventory of your assets and their location and make it available to your personal representative (update annually)



END OF LIFE PLANNING

