

415 N. LASALLE STREET, SUITE 301
CHICAGO, IL 60654
(312) 371-1200

4335 E. TIMBERWOOD DRIVE
TRAVERSE CITY, MI 49686
(231) 392-9616

EMAIL: INFO@LASUSALAW.COM
WEBSITE: WWW.LASUSALAW.COM

BASIC ESTATE PLANNING TERMS AND ISSUES

This memo explains some of the basic estate planning terms and issues to consider, and identifies some common approaches to those issues. This memo is by no means exhaustive, but simply intended to give you some background information and generate ideas. In preparation for our meeting you should consider the following issues. For each issue, you are free to do as you please.

1. **Financial (Durable) Power of Attorney.** You need to name a person and a backup to handle your financial affairs. You need to decide whether the power is immediately effective or a springing power that only takes effect upon your disability. A typical model is to name your spouse as your agent and provide that your spouse may act immediately and that your alternate can only act if you are disabled.
2. **Medical Power of Attorney (Designation of Patient Advocate).** You need to name a person and a backup to make medical decisions in the event you are unable to.
3. **Trustee.** The requirements for trustee are similar to a personal representative (see below), but it is a longer term job. The trustee's job will be to hold the assets for your spouse and children, use them for their benefit as you direct, and ultimately transfer them to your children at the ages you select. You need to name a trustee and a backup. Again, a spouse is a typical first choice.
4. **Trusts for Children.** You need to decide how the assets will be held for your children. There are two typical models for doing this: (A) separate trusts; or (B) a single trust (also known as a pot trust).

Under the separate trusts model, after you and your spouse have died, the assets are divided into separate trusts of equal value one for each of your children. The assets are held in trust for each child. You can specify essentially any rules you want about your child's rights in his or her trust. But it is fairly common to provide that the trust funds are available for the child's health, education, maintenance, and support. In addition, you can give the trustee the ability to distribute funds to the child to purchase a home or start a business. When a child turns 21 (you can change the age if you prefer), the child will start receiving all of the income (dividends and interest but not capital gains) from his or her trust. When a child reaches a predetermined age (or ages), the child may withdraw funds from his or her trust. A typical model is to stagger the withdrawal so the child can withdraw one-third at age 25, one-third at 30 and the balance at 35 (or a similar pattern). However, you can use any method you like here (e.g. withdraw the entire amount at [age]; or half at [age] and the balance at [age]). When the funds in a child's trust are gone, that child does not have rights to any other child's trust.

Under the single trust model, after you and your spouse have died, the assets are held in a single trust for your children and used for all of their benefit. When the youngest child reaches a predetermined age (typically 22 to 25, but there are no restrictions here) the assets remaining in the trust are then divided into separate trusts of equal value, one for each of your children (see above). Again, you can specify essentially any rules you want, but it is common to provide that a child's separate trust is not reduced for distributions from the single trust made for ordinary health, maintenance, and education expenses. However, if you like, you can permit the trustee to make distributions to a child to purchase a home or start a business but require the trustee to count those distributions against the child's share when the single trust is ultimately divided. The perceived advantage of this model is that it aggregates the assets into a single fund so that if one child goes to Harvard and the other child goes to an in-state public university, sufficient assets are available to cover the Harvard education. Also, under this model additional funds are available if one child suffers from a disability.

There is no right or wrong answer here. It is purely a matter of personal choice.

If you choose the separate trust model, you need to let us know at what age (or ages) you want a child to be able to withdraw his or her trust. If you choose the single trust model, you need to let us know at what age you want to divide the single trust and after the trust divides what age (or ages) do you want the children to be able to withdraw assets from their separate trusts.

5. **Guardian.** This is the person or persons who would be responsible for the physical well-being of your children if you and your spouse were to die while your children are still minors. You should name a first choice and a backup. Because the guardian is really a surrogate parent, you should consider the person's parenting skills.
6. **Conservator.** This is the person who is responsible for taking care of your children's assets. This person is not responsible for your assets because your assets would most likely be held in trust for your children. However, it is possible that your children will have assets of their own, for example, wrongful death settlement proceeds. Clients generally use one of two patterns here: (A) whoever is serving as the guardian (replacement parent) also serves as the conservator; or (B) whoever serves as trustee serves as conservator. We recommend the latter.
7. **Personal Representative.** This is the person in charge of handling your affairs after you die. The personal representative's primary jobs are to collect your assets, pay your creditors, and transfer your property to whomever you indicated in your will (typically the trustee of your trust). This should be a person capable of keeping accurate records and who has a basic level of financial knowledge (e.g., knows what mutual funds and life insurance are). This is primarily a short term job (a few months to a couple of years depending in large part on whether an estate tax return is necessary). You should select a personal representative and a backup. A spouse is a typical first choice.

Thank you so very much for placing your trust in us to provide these important legal services to you and your loved ones.

Sincerely,

LASUSA LAW OFFICES, PLC

BUSINESS LAW AND LITIGATION

ATTORNEYS LICENSED IN ILLINOIS, MICHIGAN AND WISCONSIN