

ILLINOIS ESTATE PLANNING AND PROBATE BASICS

By Priti Nemani Connor, Esq.
Nemani Law

www.nemanilaw.com

ESTATE PLANNING



TYPES OF ESTATE PLANS

▶ Will Based Estate Plan

- ▶ Last Will and Testament
- ▶ Power of Attorney for Property
- ▶ Power of Attorney for Healthcare
- ▶ Living Will
- ▶ Personal Property Memorandum

▶ Trust Based Estate Plan

- ▶ Pour-over Will
- ▶ Revocable Living Trust
- ▶ Power of Attorney for Property
- ▶ Power of Attorney for Healthcare
- ▶ Living Will
- ▶ Personal Property Memorandum

WHAT IS A WILL?

A will:

- ▶ Identifies who your family is
- ▶ Identifies your intentions regarding distribution of your assets upon death
- ▶ Can be used to create a “testamentary trust” (a trust that comes into being upon death of the grantor)
- ▶ Does not avoid probate and may require administration by the Court depending on the types and amount of assets in the estate
- ▶ Legal Provisions: 755 ILCS 5/4-1, *et seq.*

WHAT IS A TRUST?

A Trust:

- ▶ Identifies your family
- ▶ Identifies who you want your possessions and other assets to go to upon your death
- ▶ Is a private document created during your life
- ▶ If funded, a trust can avoid probate*
- ▶ Administration is done without court involvement
- ▶ Provides creditor protection for beneficiaries
- ▶ Can name a corporate trustee instead of individuals
- ▶ Provides greater flexibility
- ▶ Can also provide for creation of a testamentary trust, such as a special needs trust, a pet trust, or a parental support trust

ELEMENTS OF A TRUST

▶ Pour Over Will

- ▶ A Pour-Over Will is included with preparation of a Living Trust, typically.
- ▶ Like any Will, it identifies the testator and family
- ▶ Revokes all prior wills
- ▶ Direct the executor to “pour over” all assets not in the Trust at the time into the Trust on death of the Testator
 - ▶ *Note: \$100,000 asset rule in Illinois for small estates

POSSIBILITIES FOR TRUST DESIGN

- ▶ Flexible distribution schedules
- ▶ Creation of a testamentary trust
- ▶ Distributions at the trustee's discretion for health, education, maintenance, and support
- ▶ Grantor can meet different needs for varying beneficiaries all within one document
- ▶ For married couples, a couple can create a joint trust or individual trusts

POWERS OF ATTORNEY

- ▶ POA for Property
 - ▶ Allows principal to choose someone to act on his or her behalf when the principal is unable to act
 - ▶ Allows you to nominate a guardian in the event of your incapacity

- ▶ POA for Healthcare
 - ▶ Allows agent to make decisions for principal
 - ▶ Allows principal to make decisions regarding organ donation and level of agent's discretion regarding principal's medical care
 - ▶ Allows your to nominate a guardian in the event of your incapacity

NON-TESTAMENTARY ASSETS

- ▶ Should operate outside of probate **if there is a designated beneficiary**
- ▶ Examples
 - ▶ Life Insurance
 - ▶ Annuities
 - ▶ Transfer on Death Instrument (TODI)
 - ▶ Retirement Plans
 - ▶ Joint Tenancy and Tenancy by the Entirety
 - ▶ Other ideas?
- ▶ What happens if a non-testamentary instrument fails to designate a beneficiary? The asset may be included in your estate when you pass.

WHAT IS “PROBATE”?

- ▶ Probate is not as scary as it sounds!
- ▶ What is probate? It is defined as the action or process of proving before a competent judicial authority that a document offered for official recognition and registration as the last will and testament of a deceased person is genuine.
- ▶ Illinois law defines probate as the orderly collection and distribution of a decedent’s assets as directed by a will or as provided for by the rules of descent and distribution at 755 ILCS 5/2-1.
- ▶ Probate can:
 - ▶ Help you find the creditors of your deceased love ones;
 - ▶ Help resolve disputes about the will or trust document;
 - ▶ Provides for a fair battleground for families at odds in a probate matter

CONTACT INFORMATION

Priti Nemani Connor
Principal Attorney & Counselor-at-Law
Nemani Law

605 N. Michigan Avenue
4th Floor – Suite 421
Chicago, Illinois 60611

www.nemanilaw.com

info@nemanilaw.com