

# **THE BASICS OF ESTATE PLANNING**

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# **BIOGRAPHY**

## **Professional Overview**

Christopher M. Jahnke began his legal career writing appellate briefs as a law clerk in Syracuse, New York. Since that time, Christopher has aspired to use his legal skills to help people. After years of developing a successful career in private practice, Christopher opened the Law Offices of Christopher M. Jahnke to pursue his dreams. Shortly thereafter, Mr. Jahnke became a partner in Jahnke & Toolis LLC.

Through out his career, Christopher has represented numerous corporations and insurance companies in disputes over contract performance, employment discrimination, non-compete agreements, and general employment law issues. Christopher has counseled corporations over such sensitive issues as HIV/AIDS in the workplace and employee dating of underage clients.

As a former Adjunct Professor of Economics and advanced degree holder in business, Mr. Jahnke is familiar with the pressures of business operations, especially as business constraints factor into legal decisions. While still a student at Syracuse University, Christopher was called upon to assist in the rendering of an expert opinion on business damages in a multi-million dollar arbitration award and served as a team leader of a fellowship project aimed at providing both legal and business advice to the Commissioner of Hancock International Airport. The project was aimed at providing better business opportunities and services for airport patrons, while balancing the legal issues associated with providing incentives to add additional airlines to the airport's two main terminals.

## **Education**

- Juris Doctor, Syracuse University
- Master of Business Administration, Syracuse University
- Master of Arts in Economics, Eastern Illinois University
- Bachelor of Arts in Economics, Eastern Illinois University

## **Bar Admissions**

- Illinois
- Florida
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Illinois

# **INTRODUCTION**

This document is intended to be a BASIC guideline regarding estate planning, including powers of attorney, trusts, and wills. It is not intended to be a comprehensive guide. This handout is intended to provide a useful resource on common issues encountered by a typical individual or family. As in any area of the law, estate-planning rules, laws, and regulations change with some degree of frequency. As such, for specific issues, please consult an attorney.

## **Major Estate Planning Concerns**

Generally speaking, estate planning is used for the following reasons:

1. To satisfy the desires of the client in terms of how assets are distributed.
2. To avoid a probate proceeding.
3. To avoid guardianship proceedings.
4. To assist in the management of affairs.

Certainly there are other concerns for SOME individuals. However, this document is intended to discuss what tools are available to address the typical concerns expressed by most people. As noted below, there are three main types of estate planning documents. They are:

1. Powers of attorney
2. Wills
3. Trusts

When designed correctly, these three documents can provide a path to achieve the goals set by individuals, avoid probate and guardianship, and provide a means to have an individual's affairs managed even if that individual is incapacitated.

## **Types of Estate Planning Documents**

### **Powers of Attorney**

Did you know that if you are married, your spouse does not have the right to manage your financial assets if you are unable to do so for yourself? If you have a stroke, are injured in an accident, or any other reason, in order to manage your affairs, the Court must appoint your spouse as your guardian. This takes **TIME and MONEY**. **a power of attorney can assist in avoiding the guardianship process.**

Illinois has adopted a Durable Power of Attorney Law. This Act allows the appointment of an agent and successor agent who can act for you. THE POWER CAN BE CONDITIONED UPON THE PRINCIPAL'S INCAPACITY. These powers **survive the disability of the principal.**

Normally a power of attorney includes, but is not limited to, the power to:

1. Manage and transfer all assets
2. Deal with the IRS
3. Make gifts on your behalf
4. Create and amend any trusts you set up

**NOTE:** You don't need to transfer any assets at the time you sign a power of attorney, but it's a good idea to keep the person you've chosen informed about your ongoing financial matters.

You can also appoint a **Power of Attorney for Health Care** to make health care decisions for you when you're unable to do so yourself. **This person can provide informed consent for treatment, or even refuse treatment for you.**

**CAUTION.** A power of attorney allows the agent to do anything that a principal could do. You should not provide anyone with a power of attorney unless you place the utmost trust and confidence in that person.

DEATH AUTOMATICALLY CANCELS A POWER OF ATTORNEY. **Therefore, this device is no substitute for a Will.**

## Wills

A Will is a document that controls the disposition of a person's property at death. It is important to understand what a Will does and does not do. A Will addresses three primary issues after your death:

1. Who gets your "estate" (**beneficiaries**);
2. Who administers your estate (**executor**); and
3. Who cares for your minor children (**guardian**).

There are three basic types of Wills:

1. **Outright Will.** This type of Will is used when neither a living trust nor a testamentary trust is desired. It is "outright" because the Will provides for gifts to be made outright to the beneficiaries at death, rather than held and disposed of within a trust.
2. **Will with Testamentary Trust.** This type of Will may be used when one wants to leave gifts in trust, but does not desire to set up a revocable living trust. I rarely advise that clients use this type of trust because it is nearly

as complex and costly to draft as a living trust, without the benefit of avoiding probate.

3. **Pour-Over Will.** This type of a Will is used **in conjunction with a revocable living trust**. It serves as a "safety net" for any assets not titled in your trust after your death and pours them into the trust to be disposed of within the trust. However, pour-over Wills, like all Wills, do not avoid probate if the aggregate value of assets passing by Will exceeds \$100,000, or if there is any real estate.

In Illinois the following requirements must be met to ensure that any Will is valid:

1. The maker of a Will must be 18 years old and be of sound mind and memory.
2. The Will must be in writing.
3. The Will must be signed by the maker and must be signed by two witnesses. (Persons who are beneficiaries under the Will should not serve as witnesses.)

## Frequently asked Questions about Wills

Q: Can I change my will?

A: A Will may be revoked or changed at any time before the death of the maker. To be effective, changes must be made strictly in accordance with legal requirements. A change in a Will is often made by an addition called a "codicil."

Q: Must my spouse receive property under my will?

A: Generally, a person may give away his or her money in any way in a Will. **However, Illinois law does not allow one spouse to disinherit the other without the consent of the one who is disinherited.** A surviving spouse, whether or not named in the Will, may renounce the Will and receive a third of the deceased spouse's estate if there are surviving descendants of the deceased or one half if there are no surviving descendants. A spouse may renounce a Will for any reason.

Q: Does A Will Make For More Court Expense?

A: No. If a person dies leaving an estate, a Court determines who is to receive the estate, and makes sure that all debts and expenses are paid. This must be done whether or not there is a Will. **However, a Will can save expense by eliminating the need for sureties on bonds, expediting the sale of**

**property, avoiding guardianship for minors where not really necessary and otherwise providing the executor of the Will with clear directions on the handling of the estate.**

Q: Why Write A Will?

A: Without a Will, the Court distributes property to the legal heirs of the deceased according to law. The law is rigid and makes no exception for those in unusual need or to other circumstances. **A Will gives you the choice of distributing your estate to take care of your particular needs and goals.**

Q: I have life insurance, so I don't need a Will right?

A: Wrong. Life insurance is simply one of the kinds of property you can own. Life insurance trusts are popular devices to assure proper use of insurance proceeds. Another way of bringing insurance proceeds into a trust is by creating a trust in your Will. The insurance is then made payable to the trustee named in the Will.

## **Trusts**

There are several types of Trust agreements used in estate planning. There are:

1. Living Trusts (Revocable Living Trust)
2. Life Insurance Trusts
3. Testamentary Trusts
4. Special Needs Trusts

### **WHAT IS A TRUST ANYWAY?**

A trust is an agreement where one person (the trustee) holds and manages property for another (the beneficiary). **If you create a trust under your Will, it's called a testamentary trust.** If you create a trust while you're alive, it's called a living trust.

Living Trusts and Insurance Trusts are the two most common types of Trusts people use when creating their estate plan.

#### **I. LIVING TRUSTS**

The living trust is a vehicle for managing your property during your lifetime and passing it on to your beneficiaries at death **WITHOUT PROBATE.**

#### **HOW DOES A LIVING TRUST WORK?**

Usually, a trust agreement is prepared that names the trustee and the beneficiaries, and defines everyone's rights and duties. The agreement usually says that you retain power to

amend or revoke the Trust at any time. The trustee (or trustees) may be one or more responsible individuals or a bank or trust company. Property is transferred into the trust. A SMALL AMOUNT IS SUFFICIENT TO START THE TRUST, AND THEN MORE PROPERTY CAN BE ADDED TO THE TRUST LATER.

### **WILL I LOSE CONTROL OF MY MONEY, BE ABLE TO SELL MY HOUSE, OR TAKE WHAT I NEED FROM THE TRUST TO LIVE?**

I know what you are thinking, if all your assets are in the Trust, how can you survive? The trust agreement will allow you are to receive all of the income of the trust and as much of the principal as you request, but if you are disabled, the trustee may use the income and principal to pay your bills.

### **WHAT HAPPENS AFTER I DIE?**

Upon your death the trust property is transferred to your beneficiaries **WITHOUT PROBATE**. A trustee might also continue to manage the trust property for the beneficiaries if they are minors, disabled, or have other special needs.

### **WHAT ARE THE ADVANTAGES OF AVOIDING PROBATE?**

Avoiding probate saves time and money. Probate is also a PUBLIC proceeding. A trust is not filed in Court, therefore its provisions are private, unlike a Will, which must be filed in court at death.

### **ARE THERE ANY DISADVANTAGES?**

If you use a bank or professional trustee, there are fees to pay during your lifetime that will probably be much more than the potential probate cost savings.

### **WHAT IS THE TAX CONSEQUENCE OF A LIVING TRUST?**

The living trust has virtually no tax significance. While you live, the trust income is reported on your 1040 just as if the trust did not exist. If you are trustee, the trustee must file an annual fiduciary return on form 1041, but this is only an information return.

At death, the trust property is included in your estate for tax purposes as if you owned it outright.

## **II. LIFE INSURANCE TRUSTS**

A life insurance trust is technically a living trust, however it's purpose and function is quite different from the living trust discussed above. When a life insurance trust is created, the creator doesn't transfer any property to the trustee, alternatively he names the trustee as beneficiary of his life insurance policies. The trust is dormant until the maker dies.

Upon death, the trustee collects insurance proceeds, and distributes them according to the trust terms. This procedure allows for control over how the proceeds are distributed. The life insurance trust is a way to unify the disposition of your life insurance and the rest of your property without subjecting the insurance to probate or to claims of creditors.

### **III. SPECIAL NEEDS TRUST**

You may have a disabled child, or your family may include an adult who has been declared disabled, with or without a guardianship. A disabled child or adult who is a recipient of public or state benefits has special needs. **A special needs trust can enable family members to provide for “extras” for the disabled person without disrupting the needed stream of government assistance.**