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PRACTICING EXCLUSIVELY IN
ESTATE PLANNING · PROBATE · TRUST ADMINISTRATION
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PLANNING THE NEXT CHAPTER

You and your fiancé just spent the last year of your lives planning your dream wedding. And to your delight, the big event went off without a hitch. The food, the flowers, the first kiss ... everything was perfect. You are now married. But have you actually thought about what being married means? Have you thought about how you will honor your wed-



ding vows and be there for your spouse *in sickness and in health*?

Not surprisingly, very few married couples – whether they are newlyweds or celebrating sixty years of marriage – realize the importance of estate planning. However, *every* married couple needs some form of estate planning arrangement to protect and provide for their spouse – in sickness and in health.

Without prior planning, disability due to an illness or injury can cause needless legal and financial challenges in a marriage. Fortunately, a little preventive “maintenance” now could help avoid disaster later on

down the road. In this article, we review some of the most essential preventive measures to help you honor your wedding vows.

Legal Challenges

Most married couples have the mistaken belief that they can make personal, health care and financial decisions for one another should either spouse become disabled. But in reality, nothing could be further from the truth.

Every adult American citizen is responsible for making his or her own personal, health care and financial decisions. Accordingly, if one spouse is legally disabled, then the other spouse will not

INSIDE

In this issue of our newsletter, we discuss the importance of estate planning for every married couple. Without proper planning, various legal and financial challenges could prevent you from being there for your spouse in sickness and in health.

If you have substantial wealth and a non-citizen spouse, you should do some strategic planning now so you can postpone or avoid federal estate taxes later.

automatically have access to the disabled spouse’s medical information, bank accounts, retirement plans, etc. In fact, the *healthy* spouse will not even be able to file a joint income tax return for the couple.

Unless you have already legally appointed your spouse to be your *Agent* to make your decisions in the event of your disability, then decisions regarding your personal, health care and financial affairs will come to a screeching halt! You and your spouse will find yourselves involuntary participants in the *Lawyer Full-Employment Program* of the Probate Court.

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When forced to participate in the Lawyer Full-Employment Program, the non-disabled spouse must first hire an attorney to bring suit declaring the other spouse as legally disabled and request that the Probate Court give the non-disabled spouse legal authority to act on behalf of the disabled spouse. The Probate Judge must then appoint a different lawyer to represent the disabled spouse against the petitioning spouse. Eventually, after considerable red tape, expense and disclosure of private matters (i.e., personal, health care and financial), the Probate Judge will most likely appoint the non-disabled spouse as the *Guardian* over personal and health care matters, and as *Conservator* over financial matters.

Fortunately, an ounce of prevention is worth a pound of cure when it comes to avoiding the *Lawyer Full-Employment Program*. If you are at least 18 years old and married, then you need to legally appoint your spouse to make your personal, health care and financial decisions. The necessary legal documents include Advance Health Directives (e.g., *Durable*



Power of Attorney for Health Care Decisions/Health Care Treatment Directive/Health Care Proxy/Living Will) and a Durable Power of Attorney for Financial Matters.

Financial Challenges

While it is important to legally appoint your spouse to make your decisions in the event of your disability, it is just as important to be financially prepared should you become disabled. Because of poor planning, many families are forced into bankruptcy when the household income is suddenly insufficient to meet financial obligations.

In case you are unable to work due to an injury or illness, be sure to maintain *Disability Income Insurance* throughout your working years. And after retirement, your Disability Income Insurance (i.e., once needed to insure a steady paycheck upon disability) should be replaced by *Long-Term Care Insurance* to pay for long-term care (e.g., nursing home). Without it, many couples are forced to rely on the underfunded Medicaid system once their assets have been depleted to the poverty level.



Ask Yourself ...

These Questions Regarding "Planning the Next Chapter."

1. Have my spouse and I legally appointed one another to make our personal, health care and financial decisions should either of us become legally incapacitated? Yes No Not Sure
2. Do my spouse and I understand that failing to legally appoint one another to make such decisions could subject us to the *Lawyer Full-Employment Program* in the Probate Court? Yes No Not Sure
3. Do my spouse and I understand that fundamental legal planning to appoint one another to make such decisions includes Advance Health Directives (e.g., *Durable Power of Attorney for Health Care Decisions/Health Care Treatment Directive/Health Care Proxy/Living Will*) and a *Durable Power of Attorney for Financial Matters*? Yes No Not Sure
4. Do my spouse and I understand that just as *Disability Income Insurance* is essential to protect household income during our working years, *Long-Term Care Insurance* is essential to protect our financial independence after our working years? Yes No Not Sure
5. Have my spouse and I made plans for our long-term care to avoid relying on family? Yes No Not Sure

THE NON-CITIZEN SPOUSE

Most people don't need to worry about the federal gift and estate tax, which affects only very wealthy families. Under current law, everyone gets to transfer \$5.25 million of property without paying any gift and estate tax, which means that very few families pay the tax. Furthermore, assets left to a surviving spouse are not subject to federal estate tax, no matter how much they are worth. This rule is called the *unlimited marital deduction*. One caveat, however, is that the unlimited marital deduction does not apply when the surviving spouse is not a U.S. citizen, even if the spouse is a permanent U.S. resident.

Gifts Given During Life

If your spouse is a U.S. citizen, any gifts you give to them during your life are free of federal gift tax. If your spouse is not a U.S. citizen, however, the favorable tax-free treatment for spouses is limited to \$143,000 a year (2013). But note, the \$143,000 is in addition to the \$5.25 million you can transfer to anyone without owing federal gift and/or estate tax.

Postponing or Avoiding Estate Taxes Upon Death

If you have substantial wealth and a non-citizen spouse, you should consider one of the following strategies to postpone or avoid federal estate taxes.

• Get Citizenship

If your spouse becomes a U.S. citizen by the time your estate's federal estate tax return is due, he or she will qualify for the unlimited marital deduction. The return is generally due nine months after death, but the IRS may grant a six-month extension. Because it takes a long time to get citizenship,

however, this isn't an option for most people.

• Use a QDOT Trust

Your noncitizen spouse can inherit from you free of estate tax if you use a special trust, called a "qualified domestic trust" or QDOT. (Internal Revenue Code section 2056A.) You leave property to the trust, instead of directly to your spouse and name your spouse as the only beneficiary of the trust. If your spouse receives income that the trust property generates, these amounts are not subject to estate tax. However, if trust assets themselves are distributed to your spouse, the estate tax will most likely have to be paid on that property. (Unless distribution is made due to a qualifying hardship).

A QDOT must be established, and the property must be transferred to it, by the time the estate tax return of the deceased spouse is due. Usually, it's set



up while both spouses are alive and comes into existence when the citizen spouse dies. And finally, the trustee must be a U.S. citizen or a U.S. corporation – such as a bank or trust company.

Transfers of wealth to non-citizen spouses involve complicated legal rules. Be sure to speak with an experienced estate planning lawyer to ensure compliance.

POCKET PROTECTORS

Tips to help you protect your pocket!

Is it Time to Review Your Plan?

Proper estate planning is a *process*, not simply a one-time event. Therefore, it only makes sense to periodically review your planning goals and legal instruments. Review this list of life changes that could alter your estate-planning needs. If you notice some areas that might apply to you or your family, then it may be time for an estate plan check-up.

1. Marriage, remarriage or divorce
2. Death of a spouse or beneficiary
3. Substantial change in estate size
4. Death or incapacity of an executor, trustee or guardian
5. Move to another state
6. Acquisition of property in another state
7. Birth or adoption of a child or grandchild
8. Serious illness of a family member
9. Change in business interest or retirement
10. Change in insurability for life insurance
11. Marriage or divorce of a beneficiary
12. Change in beneficiary attitudes
13. Financial irresponsibility of a child
14. Change in tax law
15. More than two years since review of plan with attorney



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Drucker Law Offices is a full service trusts and estates law firm with its principal offices located in Beverly Hills, California. We practice exclusively in the areas of estate planning, probate administration, trust administration, conservatorships and trusts and estates litigation. Our attorneys bring a sophisticated level of understanding to these complex and technical areas of the law.

Joelle Drucker and Michelle Correll, the firm's attorneys, have extensive experience practicing in large national law firms, but both have chosen to use their skills and experience in a way that allows them the ability to place a greater emphasis on the needs of their clients with a higher level of personal service. We strive for solutions that are practical and cost effective. The foundation and fundamental values of Drucker Law Offices are based on a firm belief in building and maintaining personal long-term relationships with our clients.

For additional information about our law firm, please visit our website at www.druckerlaw.com. If you would like a friend or client to receive our newsletter, please call our office at 310.285.5375 and provide us with their name and e-mail address. Also, please visit and subscribe to our law blog, Practical Trusts and Estates Law Tips Blog, at www.druckerlaw.com/practical-trusts-and-estates-tips-blog/ for insight and commentary on current developments in estate planning, estate tax law, and post-mortem administration that may be helpful to you and your loved ones.