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Attorney at Law

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Estate Planning | Wills & Trusts

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## **Painless Estate Planning**

According to a recent survey by Harris Interactive, people despise addressing their estate planning needs so much that one-third of those participating in the survey would rather do their taxes, get a root canal, or give up sex for a month rather than create or update a Will.<sup>1</sup>

However, creating a responsible estate plan does not have to be as painful or difficult as many people perceive. As a matter of fact, the whole process can be completed within a few weeks. More importantly, once it is complete, you will sleep better knowing that you are prepared for the inevitable and the unpredictable.

### **The Decision**

The initial step of deciding that you are ready to take control of your assets and your family's future can be intimidating; death and the thought of leaving loved ones behind are not pleasant topics. However, the right counsel should alleviate any concerns by addressing each issue clearly, explaining the transfer process after the death of an individual and answering any questions you may have.

The process of planning that I undertake with an individual or couple who has made this decision, described below, is designed to make achieving your goals as painless as possible.

### **The Questionnaire**

Once you have decided to take control of your estate planning, the next step consists of completing a short questionnaire which will help me gain an understanding of your family relationships and the nature of your assets. You should complete the first page of the questionnaire which consists of facts and background questions, such as your family, residency, citizenship, whether you have any existing pre- or post-marital agreements or estate planning documents and whether you have any previous marriages or children outside of your current relationship.

### **The Initial Meeting**

After you have completed the first page of the questionnaire, we will then meet at your convenience to discuss your family, your assets, your goals and your desires for the

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distribution of your property. We will discuss the remainder of the questionnaire together at this time. The issues to be addressed will include how you would like your assets to be distributed and the agents that you would like to name to make decisions on your behalf if you are unable to do so. Positions to be filled include the following:

1. **Guardian** to care for your minor children (if applicable) if you are unable to do so;
2. **Executor/Trustee** to distribute your estate/trust after your death according to your desires stated in your documents;
3. **Property Agent** to make decisions regarding your assets during your life in the event that you are incapacitated; and
4. **Health Care Agent** to make decisions regarding your health care during your life in the event that you are incapacitated.

We will also discuss your assets at this time to ensure that everything is properly titled to maximize the tax and asset protection benefits that are available and to minimize the transfer and probate costs that are incurred. This step also includes discussing the beneficiary designations on certain assets, such as retirement accounts and life insurance policies.

Based on our discussion, I will then make recommendations regarding the estate planning documents and techniques that suit you best and will accomplish your goals in the most efficient way possible. Recommendations may vary from simple to complex depending on your particular circumstances. Some of the instruments that we may utilize in your estate planning include Revocable Living Trusts, Irrevocable Life Insurance Trusts, Charitable Trusts and lifetime gifts. More complex plans may also include the use of Limited Liability Companies, Grantor Retained Annuity Trusts or Qualified Personal Residence Trusts. At this time, I will thoroughly explain how each instrument will work to meet your goals and to provide for your loved ones.

Fees for legal services, which will vary depending on the complexity of your estate and the techniques you choose, will be clearly discussed before we move forward with your estate planning.

### **The Documents**

Once you make the decision to proceed with your estate planning, I will prepare the documents that we have discussed. This process generally takes two to three weeks but can be expedited if necessary.

You will then receive drafts of all documents along with a letter summarizing your estate plan so that you have a chance to review them and ask any questions before the documents are signed. In your review, you should ensure that you understand the provisions of the estate plan and that the names and relationships of the individuals

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named in your documents are correct. If you do not understand any of the provisions of your estate plan, please make sure to ask. It is important that the documents clearly reflect your intents and desires.

Once the documents have been reviewed, any questions can be addressed and any desired changes can be made. We can then arrange a meeting to sign the documents at a time and location that is convenient for you. Your documents are effective upon signing.

Due to the frequent changes in tax laws, it is recommended that you review your estate planning documents every two to three years to ensure that they continue to reflect your desires. You should also consult with your attorney to discuss any significant changes in the law since your documents were prepared. If drafted correctly, your documents should not require updating unless your desired agents or distribution have changed or there is a significant change in your family, financial situation or the Federal or State tax laws. Future born children or grandchildren should be provided for in your documents so that you do not have to spend your time and money updating your documents unless an otherwise unforeseeable event occurs.

### ***The Funding***

Once the documents have been executed, I will guide you through the funding of your Revocable Living Trust (if applicable). Funding or re-titling your property to your Trust is a very important, yet often neglected, part of estate planning. Proper funding of a Revocable Living Trust will allow you to retain full control of your assets while also minimizing the effects of taxes and reducing the size of your probate estate. Without proper funding, the benefit of avoiding probate may be minimized or lost altogether.

### ***The Postponed Estate Plan***

Regardless of the reason that you have postponed your planning up until now, the most important thing to remember is that the alternative to responsible planning is a much more painful and expensive process.

If you are incapacitated without having Powers of Attorney in place, your family members must hire legal counsel to have a guardian appointed. This can handcuff your loved ones by delaying access to your accounts for your benefit and preventing them from making medical decisions that must be made on your behalf. Unfortunately, it is the family members that must bear this burden. The process of having a guardian named by the courts costs far more and is much more difficult than putting a complete estate plan into place now.

Additionally, if you pass away without an estate plan (referred to as “intestate”), your assets must pass through the probate process, generally lasting at least six to nine months.<sup>2</sup> Additional costs such as hiring legal counsel, obtaining a bond to secure your estate or litigation resulting from heirs battling over assets will far exceed the cost of putting a complete estate plan into place now.

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In addition to the perception that estate planning is a long and difficult process, many people also delay their planning because they put unnecessary pressure on the decisions to be made. It is important to remember that all of the decisions that you make regarding your Revocable Living Trust, Will and Powers of Attorney can be amended or revoked by you at any time during your life. While these are important decisions that should be thought out carefully, it is far better to have an estate plan which you may change in the future than to have nothing at all in place.

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1. *Death, Taxes, Sex and Root Canal*, Jane Wells (CNBC), Mar. 31, 2011.
  2. Wills do not avoid probate, but assets titled to your Revocable Trust do avoid probate.
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Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Elder Law and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish is also a member of the Chicago Bar Association, the Asian American Bar Association of Chicago and the Indian American Bar Association.

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