

Client Personal Planning Special

PERSONAL OR “ESTATE” PLANNING

F. Stephen Glass

A comprehensive estate plan addresses what will happen to one's property after death, as well as many other issues such as planning for management and control of assets during any period of incapacity, minimizing estate and gift taxes, estate administration expenses, delay and inconvenience in settlement of the estate. Creating such an estate plan requires careful analysis of each individual's estate, his or her estate planning goals and the applicable state and federal laws. Once the estate plan is formulated, the next step is to implement the estate plan which is accomplished through executing legal documents, but it can also involve additional steps such as transferring assets, changing beneficiary designations or even forming business entities.

The following is a brief description of some of the more commonly used estate planning tools:

Last Will and Testament – A Will is a legal document that states the person's directions regarding the disposition of his or her property after death. It provides for naming an executor who is responsible for overseeing the settlement of the decedent's estate. A Will can include provisions to implement steps to minimize estate taxes, or to hold and protect property for the benefit of minors or incapacitated persons. It also may convey property to one or more trusts.

Trusts – There are many different types of trusts. A trust is a fiduciary relationship in which a person (grantor) transfers property to a fiduciary (trustee) to hold for the benefit of a beneficiary or beneficiaries. A trust can be established during the grantor's lifetime (*inter vivos*) or through the provisions of a Will after death (testamentary). Trusts can serve a variety of purposes in estate planning, such as minimizing estate taxes, probate avoidance, asset protection or for benefit qualification. Examples of types of Trusts include: Revocable Living Trusts, Irrevocable Life Insurance Trust, various Charitable Trusts and Generation-Skipping Transfer Tax Trusts.

Durable Powers of Attorney – A durable power of attorney is used to appoint someone whom you trust with the authority to act on your behalf under certain circumstances. There are several different types of these powers of attorney.

Health Care Power of Attorney. This special document is based upon statutory authority that allows you to appoint a person to make health care decisions for you should you be unable to make such decisions for yourself. [See the following article]

NEW LIVING WILL AND HEALTHCARE POWER OF ATTORNEY — AND A “MOST”

Jean Winborne Boyles

North Carolina recently revised its laws regarding Living Wills, Healthcare Powers of Attorney and adopted certain forms to be used to direct healthcare decisions when the patient is not able to make them. Revisions were made to Living Will and a Healthcare Power of Attorney forms. A new document was established: a “MOST” (Medical Orders for Scope of Treatment)



which is a portable medical order. Living Wills and Healthcare Powers of Attorney are legal instruments executed by individuals requiring witnesses and notarization. A MOST does not require a witness or notarization because it is a Physician Order (also called a medical order) issued by a physician, physician assistant or nurse practitioner. Like all other Physician Orders, a MOST should be issued only with the informed consent of the patient or the appropriate patient representative.

Even though our laws have been revised, the revisions do not invalidate your old Living Will or Healthcare Power of Attorney. Additional options may now be available through the utilization of the new forms.

It is important that you communicate with your family members the decisions you have made concerning withdrawal or withholding of certain life sustaining and life prolonging measures at the end of life, or in a state of unconsciousness when it is medically certain that the return to a cognitive state will not occur. remains important.

THE PRACTICAL SIDE OF PERSONAL PLANNING

Samuel H. Johnson

A good estate plan can stand the test of time. Keeping your estate plan up-to-date is important. If you prepared a good plan and have kept it up-to-date, don't be persuaded by others to change your plan.

These are examples to illustrate my recommendations of proper planning.

- Mr. B was a Wake County businessman who owned several enterprises and farms. Every fall I sat with him at the Congressional Breakfast in Raleigh to discuss agricultural issues and he always said, "I'm coming to see you soon to do my Will." He never did and then he died without a Will.

I was selected to handle his estate and another businessman agreed to serve as his administrator. Upon investigation, I found that Mr. B was married as a young man and had three children and was then divorced and married a second time and had three more children and of these, two were under 18 years of age. Mr. B did not understand how he wanted to do his Will and so he kept putting it off. I could have easily solved the problem and named his businessman friend as his executor, and his estate could have been administered without difficulty. As it was, we decided the prudent thing to do was to keep the estate open about five years until the youngest child reached 18 years of age and could legally enter into some agreements that were needed to settle the estate. The cost was about three times what it would have been with a Will.

- Mrs. S was a widow and had no children, but had many nieces and nephews and friends who were included in her Will. They all expected a generous portion from her estate because she had told them about her wishes. She died as a result of a bad automobile accident while traveling in another State. She was responsible for this accident in which another person was seriously injured. Upon investigation we found that she only had \$100,000.00 automobile liability insurance coverage and was facing a claim greatly in excess of her insurance policy limits. When the personal injury lawsuit was concluded, the estate of Mrs. S contained only a small amount for the nieces, nephews and friends. Had Mrs. S purchased an automobile liability insurance policy with adequate coverage, her assets could have been protected.

- Mr. O made his Will 20 or 30 years ago. Circumstances have substantially changed but his Will has not been updated. The court will recognize the validity of this old Will, but because it has not been kept up-to-date, it might no longer fit the family circle. This is an example of very poor planning.

Everyone should have an estate plan. It should be kept up to date as time and circumstances change. This is the least you can do for your family.

About our authors:

Samuel H. Johnson - His law practice areas of concentration now include association law, legislative law, general business advice, estate planning and probate law including preparation of wills, durable business power of attorney, living wills, health care power of attorney and trust agreements. A 1953 graduate of the University of North Carolina School of Law, he is admitted to practice in the U.S. District Court, Eastern District of N.C. and U.S. Supreme Court. He served in the N.C. House of Representatives from 1965 to 1974. He has also served as a Trustee, University of North Carolina, 1967-1972; Chairman, N. C. Local Government Study Commission, 1967-1973. N.C. Joint Select Commission on Fiscal Trends and Reform, 1992-1993; Advisory Budget Commission of N.C., 1969-1971; and Special Counsel to Speaker of House of Representatives and Lt. Governor, 1975-1977. He has been inducted into the North Carolina General Practice Hall of Fame.

Jean Winborne Boyles concentrates her practice in health law, corporate law, bankruptcy and creditors' rights, commercial leasing, antitrust and state administrative law.

F. Stephen Glass [see Mr. Glass' bio on page 4 of [Business Law Notes](#)]