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## Components of a Good Estate Plan

### Senior Law Day 2023

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### Will

- Sets forth your instructions regarding your property and legal rights after you pass away
- Things to think about:
- What do you want to happen to your property when you die?
  - Who should it go to? These are your beneficiaries
  - What if a beneficiary dies before you - who should his share go to? These are your alternate beneficiaries
- Executor - who do you want to manage your estate after you pass away, to make sure it goes where it should, pay taxes, etc.?
- Guardian - if you have children under 18, or a disabled loved one for whom you serve as guardian, you can appoint a testamentary guardian
- Trusts - what if when you die, a beneficiary shouldn't get the money outright?
  - ...because he is going through a divorce, being sued, has substance abuse issues, is too young, etc. (spendthrift trust)
  - ...or you want to provide for your current spouse for life, but leave remainder to children from previous marriage (QTIP trust)
  - ...or a beneficiary is disabled and on public benefits (special needs trust)
  - In a trust, money is held in trust and managed by trustees

- Taxes - if your estate is worth more than a certain amount, or you leave property to certain people, your estate may have to pay taxes
  - A good estate plan can help reduce or avoid taxes
  - Estate plan can also help protect your estate if you or a loved one needs long term care

### **Advance Directive for Healthcare**

- Sets forth your instructions regarding medical care
- Takes effect if you're incapacitated - if you can't make decisions for yourself
- Instruction directive (also called living will)
  - Sets forth your instructions on healthcare, including end-of-life care
  - If you were in final stages of a terminal illness, or "permanently unconscious," would you want artificial life support and invasive surgeries?
  - Would you want palliative "comfort" care?
  - Other medical preferences?
- Proxy directive (also called medical power of attorney)
  - You can appoint a "healthcare representative" to make medical decisions for you when you are unable to
  - Can waive HIPAA privacy rights regarding your healthcare representative
    - otherwise, doctors may refuse to talk to representative
  - Can give healthcare representative rights regarding visitors

### **Power of Attorney (POA)**

- You can appoint agent to manage your financial affairs
- You can give agent as much or little authority as you want - only over certain accounts, or over all your property
- Agent can usually write checks from your accounts, move money between accounts, enter into contracts and file lawsuits on your behalf, sometimes make gifts, etc.
- This is important because if you can't manage your financial affairs, someone still needs to pay the bills, and your agent can do it for you. However, by giving your agent access to your money, there's also potential for your agent to steal from you
- This is a position of great trust, and you should only appoint someone under a power of attorney if you trust them with your money