

WARD & MURPHY

ATTORNEYS AND COUNSELORS-AT-LAW

SPRING 2007

Estate Planning - probate? tax? what?

Estate planning? What does that mean? Do I have to have a will? What is "probate" and how much does it cost? Can't I avoid the costs of probate? How? Do I need to have a will if I have a power of attorney?

Most people actually know all of the basic information on estate planning. The challenge, however, is to organize the information you know in the right order to answer many of these basic questions. You can use this article to help you organize the basics of estate planning. If you find you need to write or update any of your documents or you have more questions, you can call the office for an appointment to review your estate plans.

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Frequently Asked Questions

How can I give assets away when I die? There are three ways: 1) you can "jointly title" your assets - establish in writing that there are two owners. Generally, you jointly title large items like houses and cars - but you can jointly title anything; 2) you can contract to give assets away - this is how you can give money with an insurance policy or with the remainder of your retirement accounts; 3) you can leave the asset to someone in your will or the law will dispose of it for you.

Do I need to go to Court to get ownership of property in "joint title?" - No. The point of joint titling is that the other person owns the property as soon as you die without any court application. The law recognizes the joint title document as sufficient proof of ownership without a court application.

Do I have to have a will? No. If you die without having a will, the law will imply a will for you (called the "law of intestacy" - Latin for "dying without a will"). Under that implied will, for example, if you die while married and with children, your spouse will take half your assets and your children - no matter how young - will take the other half.

I have a power of attorney, can't my attorney-in-fact just use that? No, because the power of attorney ends when you die.

So what good is a power of attorney? It allows someone to act for you when you cannot act for yourself. Often, people use powers of attorney to make sure someone can pay their bills while they are in the hospital, for example.

How many powers of attorney can I give? You can give as many as you wish and you can give either very wide or very limited powers. Be careful, though, because each "attorney-in-fact" you appoint can act just as though they are you ... even if you are standing right there. An attorney-in-fact with authority over your bank accounts can even make withdrawals when you are perfectly able to handle your own business. So be careful!



If I have a power of attorney, I don't need a living will, right? Not exactly. A person who holds a power of attorney does not get to make medical decisions. To allow someone to make medical decisions for you, you need to give them a "health care proxy."

I don't want a "proxy," I want a living will! The terminology is confusing. Even more confusing is that what is law in one state for estate planning is not necessarily the law of another state. In Pennsylvania, you can have a "living will" - or written instructions to your doctor about treatment you want or do not want. Here in New York, you do not give instructions to your doctor - you appoint a "proxy" or a person to talk to your doctor for you and then you give your proxy a set of "directives."

Do I have to have a proxy and directives? Not unless you want to limit your treatment - doctors will give you all the treatment they think is medically appropriate if you do not have a proxy or directives.

A relative just died, what do I have to do? A lot depends on what assets your relative had. There is no law that requires a will to given to the court or "probated" - latin for "to prove." You submit a will to the Court to "prove" it is the relative's last wishes when you want to transfer the assets the relative had in their own name to the people named in the will. You can take as much time as you need to do complete the process.

How much does it cost? Filing fees with the Court depend on the value of the assets you need to distribute based on the will's instructions. If the assets your relative had in their "sole" name are less than \$20,000, the filing

fee is \$1 and the form is designed to make it easy to complete. Remember, you do not need to make a filing if all the relative's assets were in "joint" name - and using "joint titling" is often the best way of avoiding the cost of probate.

How often do people contest a will? Not often. To contest a will, a person must show that the person signed their will when they did not know what they were doing (mentally incompetent) or that someone was forcing them to sign the will (duress).

How long does it take to complete an estate? Typically, it takes 9-12 months to complete an estate. The time is a result of the time it takes to accumulate the right information and the need to give the dead person's creditors a full seven months in which to file their claims.

Who has my file from Jack Ward's or Evan Webster's office?

Ward & Murphy is the successor to both the law offices of Evan Webster in Groton and Jack Ward in Ithaca. We have files going back at least seven years (and as many as forty years) from both offices. We are now sending this newsletter to keep all our clients up-to-date. All our Groton estate clients are now computerized (to the extent we have current addresses) and the majority of our Ithaca estate clients are also in our database.

You, of course, retain the choice of lawyer. Unless you tell us otherwise, Ward & Murphy will presume you wish us to continue as your attorneys and we look forward to continuing that relationship with you.

From *Lawyers Say the Darndest Things* - in the category of "anyone can make a mistake":
In a deposition, the witness said: "I was sitting behind the bush and I saw something move, so I raised my rifle and shot the plaintiff because I thought he was a turkey."

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FIELD(CON_Home_Address2)
FIELD(CON_Home_City), FIELD(CON_Home_State)
FIELD(CON_Home_Zip)
POSTNET(FIELD(CON_Home_Zip))