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SINGLE ESTATE PLAN MEMO

Your estate plan will likely have 5 documents: a will, living will, durable medical and financial powers of attorney, and a transfer on death/beneficiary deed/trust for your house.

Here's a brief overview of the various estate planning documents:

Will
A Will goes into effect at your death, appoints an executor to handle your estate, and specifies who receives your property. Your Wills have some custom provisions for your unique family situation and desires, with standard provisions defining your executor's powers and giving them broad latitude to handle your last affairs.

Executor's Role: What's A Fiduciary?
Under your Will, your Executor will be appointed by the probate court, and have fiduciary legal duties. An Executor (or other fiduciary) follows the instructions in your legal documents, and is free to ask your attorney, doctor, CPA, or financial advisor if they have a question. An Executor is entitled to reasonable compensation for time and services and reimbursement of reasonable expenses. As a fiduciary, an Executor must act in your estate's best interest, serving the beneficiaries' interests above their own. If an Executor or another fiduciary (a Conservator, Guardian, Trustee, or Attorney in Fact) acts in their own interests, they will likely be removed and may be legally or financially liable for expenses they caused. A fiduciary is only liable if they engage in fraudulent conduct or act in bad faith or fail to act when they should. The fiduciary should act in the estate's best interest, do the right thing, and act in good faith.

The executor's powers are broad, and they include:

- managing your business interests,
- sell, contract, lease, or rent property and/or estate assets,
- make tax elections,
- mediate a beneficiary dispute over a specific gift.

State law and your legal documents give your Executor (or other fiduciary) broad powers and plenty of flexibility to make a good decision on your behalf.

Conservator or Guardian
Your Will and Durable and Medical Financial Powers of Attorney documents will also name a Conservator or Guardian for you, and a Conservator or Guardian for your minor children. A Conservator manages your finances, while a Guardian takes care of your

person: e.g. the Conservator would handle banking business, and the Guardian would take you to the doctor. If you need a Conservator or Guardian in the future, the local probate court would likely follow your recommendations in these documents and allow the Conservator or Guardian to serve without posting bond (as they would allow an Executor to serve without bond after your death). Naming a Conservator or Guardian is a backup or fail safe to your attorney in fact and expedites the Conservatorship or Guardianship case in probate court, since the Court would know who you wanted and could waive bond. Usually you won't need a Conservator or Guardian if you already have an attorney in fact or agent in place, but it's possible you would, so these documents take care of that.

Conservator or Guardian for Minor Children

When you have minor children (under 18 years old), they need a Conservator if they would inherit property under your Will, transfer on death deed, or beneficiary designations (a Trustee would handle this under a Trust), since a minor can't inherit or own/hold property. A minor child also needs a Guardian to take care of them until they become an adult. We recommend naming trusted family members or close family friends as Conservator or Guardian for children, to ensure the children are able to continue on with their lives as much as possible with as little disruption as possible.

Careful thought should be given to naming a relative or friend who knows the child well and has a good rapport with them, who shares your moral or religious values and financial or lifestyle goals as much as possible, and who you trust to raise and care for your child if you're not able to do so. Don't worry about offending a relative or friend by choosing one over another – a good relationship and shared values or legacy between yourself, the Conservator, and your child are vital, so choose carefully - you want the Conservator to be "on the same page" with you about various matters. A letter, note, or video for the child or the Conservator or Guardian may help to explain your decision, and share any personal thoughts, values, or legacy with them.

A Conservator needs to be good with money and be ready to steward resources for the child's health, education, maintenance, welfare, and best interests, while clearly understanding that the money is for the child's benefit, not the Conservator's. Vacations, private school, new clothes, a new car, a new house, or other purchases are fine if they are truly for the child's benefit (and part of the child's accustomed standard of living), but luxurious or extravagant spending or upgrades may be illegal and cause liability for the Conservator. A Conservator will also make an annual accounting to the probate court, which provides accountability that spending is for the child's benefit and to meet the child's needs.

A Conservator or Guardian also needs to be mature and emotionally, physically, and psychologically able to care for the child and help the child live life as best they can. When a Conservator or Guardian is needed for a child, the family's usually been through a great trauma or grappling with grief (you and/or your spouse's death or major disability or incapacity). Grieving and emotional support are important, but the Conservator or

Guardian needs to be able to talk with the child about these issues, and to lead the child to live their life while treasuring memories and their time with you and your spouse.

Living Will
A living will tells doctors and family members when and how you want to be kept alive or have life sustaining or prolonging medical procedures done for you if you become incapacitated, in a coma, or are terminally ill. Living wills help your family avoid very difficult situations like the Terry Schiavo or Nancy Cruzan tragedies. Living wills can include do not resuscitate (DNR) orders, comfort care if you are terminally ill, no life support, or die at home instead of a hospital, among other preferences, or can be customized and tailored to reflect your unique wishes and moral convictions about end of life issues.

Medical Durable Powers of Attorney
A medical durable power of attorney authorizes a person to act on your behalf to make medical decisions for you while you are alive, but unable to act, such as authorizing surgery or a medical procedure if you are unconscious or in a car wreck. The person is called your attorney in fact and is your agent. We can customize powers to parallel the desires expressed in your living will.

Financial Durable Powers of Attorney
A financial durable power of attorney authorizes a person to act on your behalf to make financial decisions for you while you are alive, but unable to act, such as paying bills, depositing monies into bank accounts, transferring monies between accounts, and related financial transactions. The person is called your attorney in fact and is your agent. State law provides some standard provisions, and we can tailor optional powers to allow your attorney in fact to make gifts, alienate your homestead rights, establish trusts, or similar things.

Trust
A revocable or living trust starts during your life and becomes irrevocable at your death. The grantor or settlor starts a trust, the trustee manages the assets, and the beneficiaries get the money. Depending on the trust, you can play two or even all three of these roles. There are different types of trusts. A testamentary trust is part of your Will. A contingent trust holds assets for children or minor beneficiaries. A standalone trust works with a pourover Will and at your death, any assets in your estate are poured into your trust through your Will, much like pouring water from a pitcher into a glass.

Probate Avoidance
Trusts avoid probate. Under the current tax paradigms, some clients prefer less expensive and complex alternatives to trusts, which still avoid probate. Trust alternatives include joint tenancy, pay on death, transfer on death, beneficiary designations, and other property forms. These alternatives avoid probate and operate in a piece meal fashion – instead of having most assets under a trust's umbrella, each asset or account is individually titled to pass to the desired beneficiary at death, and those transfers can be done outside of court by presenting a death certificate to the bank or financial institution.

These alternatives are less expensive, but require extra care to ensure assets are properly titled to avoid probate.

Asset Protection & Dynasty Trusts
Asset protection trusts or dynasty trusts are a popular option for young professionals or high net worth families. These trusts are often designed to last for generations and can hold assets for a family's benefit for 500 years or more. These trusts are always irrevocable and remove the assets from the individual's estate for estate tax and creditor avoidance purposes, although they can be designed so the individual still pays income taxes to achieve optimal wealth transfer efficiency. These trusts must file a Form 1041 if they have over $600 per year in income.

An asset protection or dynasty trust can be done in Missouri (a Kansas resident needs a Missouri trustee). An asset protection trust must be irrevocable and a separate legal (and tax) entity from the grantor, or it won't protect assets from creditors. An asset protection trust requires a "badges of fraud" analysis, to ensure the transfers are legitimate - no known creditors or pending lawsuits. Otherwise, bankruptcy and other courts may disregard the trust and let creditors pursue the assets.

Trust Taxes[1]
Fiduciary Income Taxes
Revocable or living trusts, whether part of your Will or standalone documents, are considered to be you for tax purposes (no separate tax returns needed). When a trust becomes irrevocable (either upon your death or if it is started that way), it gets its own tax ID number (EIN) from the IRS and pays fiduciary income taxes on a Form 1041 for income over $600 per year. Fiduciary income tax rates reach the maximum individual tax rate after about $12,950 of income (vis-à-vis the maximum married couple tax rate after about $612,350 of income), so holding income-producing assets in a trust can be very expensive from a tax perspective, although beneficial in some cases.[2]

A grantor trust is a trust tax feature, where the grantor pays the trust's income taxes. (Other design options are a regular trust, where the trustee pays the taxes, or a beneficiary trust, where the beneficiary pays the taxes.) Grantor or beneficiary trusts can be very helpful for some clients, but require careful tax planning and drafting.

Estate, Gift, and GST Taxes
Fiduciary income taxes (paid by estates or trusts) are distinct from estate, gift, and generation skipping (GST) taxes. Estate and GST taxes are paid to the IRS with a Form 706, while gift taxes are paid with a Form 709. Kansas and Missouri do not have estate, gift, or GST taxes. Most Kansas City clients do not have estate or GST tax issues since the 2023 thresholds are $12.92 million/person. This can be a helpful election for clients to make depending on their family situation. Gift taxes are owed for any gifts to a family

[1] IRS Circular 230 Tax Disclosure: Unless otherwise expressly stated, any U.S. federal tax advice contained in this letter or materials is not intended or written by Johnson Law KC LLC to be used to avoid IRS or other tax penalties, and any tax advice cannot be used to avoid IRS penalties that may be imposed.
[2] IRS Rev. Proc. 2019-44.

member or friend of over $17,000 per year. For many clients, gifting is a great way to transfer wealth to children or grandchildren, bolster college funds, or do other financial planning.

If you have any questions or would like more information about your estate planning options, please contact Steve for a free consultation, at (913) 707-9220 or steve@johnsonlawkc.com.