

## APPENDIX C

# Decision-Making for Your Estate Plan Form

Filling out this form will be very helpful to you in preparing your legal documents. The types of decisions that need to be made are listed with, in some cases, suggestions. By picking from the options before you see an attorney you will have time to discuss and think about the appropriate choices. This will save you attorney time, and money, later on. Your attorney likely would ask you these things, but having answers prepared ahead of time will make the process quicker.

YOUR NAME \_\_\_\_\_

US Citizen? \_\_\_\_ Yes \_\_\_\_ No

Date of Birth \_\_\_\_\_ Email \_\_\_\_\_

SPOUSE'S NAME \_\_\_\_\_

US Citizen? \_\_\_\_ Yes \_\_\_\_ No

Date of Birth \_\_\_\_\_ Email \_\_\_\_\_

Telephone You \_\_\_\_\_ Spouse \_\_\_\_\_

Street Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_  
State \_\_\_\_\_ Zip \_\_\_\_\_

Mailing Address if different

\_\_\_\_\_  
\_\_\_\_\_

Children of this marriage if any: (Including those deceased)

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Children of a prior marriage: (Including those deceased) check  
if children of H=husband W=wife

Name: \_\_\_\_\_ H \_\_\_ W

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_ H \_\_\_ W

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_ H \_\_\_ W

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_ H \_\_\_ W

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Name: \_\_\_\_\_ H \_\_\_ W

DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_



Name: \_\_\_\_\_ H \_\_\_ W  
DOB \_\_\_/\_\_\_/\_\_\_ Living? Yes \_\_\_ No \_\_\_

Are any children disabled, under a court-ordered guardianship, or receiving governmental assistance such as Medicaid? If so, explain:

\_\_\_\_\_  
\_\_\_\_\_

Is your spouse disabled, in a nursing home, or suffering from dementia, Alzheimer's disease, or other mental impairment? If so, explain:

\_\_\_\_\_  
\_\_\_\_\_

If so, do you have a durable power of attorney for your spouse?  
\_\_\_\_\_ If so, please attach a copy.

If you have minor children, who would you like to nominate as their guardians (do not name a couple):

First Choice: \_\_\_\_\_

Relationship to you \_\_\_\_\_

Second Choice: \_\_\_\_\_

Relationship to you \_\_\_\_\_

(The reason we do not suggest a couple as guardians is that it is possible they could be separated or contemplating divorce at your death, and if both are named, then there is a potential custody case that could result.)

**Trustees.** Who do you want to handle your estate after both of your deaths? (Name one or more.)

In Order \_\_\_\_\_ Jointly \_\_\_\_\_

1)

Name: \_\_\_\_\_

Address \_\_\_\_\_

Relationship to you \_\_\_\_\_

Telephone \_\_\_\_\_

2)

Name: \_\_\_\_\_

Address \_\_\_\_\_

Relationship to you \_\_\_\_\_

Telephone \_\_\_\_\_

3)

Name: \_\_\_\_\_

Address \_\_\_\_\_

Relationship to you \_\_\_\_\_

Telephone \_\_\_\_\_

**Your beneficiaries.** This is the section of your trust that is of most interest to everyone and which deserves the most thought. Sometimes the decision is simple, leaving everything to one person or leaving everything equally to a group of people. But there are situations where that distribution plan would not be in the best interests of the beneficiaries. Here are some ideas:

If your beneficiaries include minor children, it is a very good idea to restrict their access to their inheritance subject to certain conditions. Here is an example of one such plan.

*If any Beneficiary (including but not limited to a grandchild, if any) is under the age of 40 years when the distribution is to be made, the Trustee shall retain any such property and administer and distribute the same for the benefit of the beneficiary, paying to or for the benefit of such person so much of the income and principal of the retained property from time to time, as the Trustee deems advisable for his or her health, education, support, and maintenance.*

Note that this language allows the trustee to use his discretion on what he thinks is appropriate for the beneficiary's health, education, support, and maintenance but does not require that any funds be used for those purposes. The age you choose is up to you, and sometimes people will even hold back part of the inheritance until the beneficiary's retirement age, in effect funding a retirement plan for them. Nowadays with fewer employers funding pension plans and the uncertainty of Social Security, this isn't a bad idea. The trustee is in charge of the funds, not the beneficiary. It continues:

*When the person for whom the property is held attains the age of 30 years, one-third of the remainder of that person's share of the trust being held for him or her shall thereupon be distributed to him or her free of trust. Upon attaining age 35, one-half the remainder shall be distributed to him or her with the remainder being distributed to him or her upon attaining age 40. If the person should die before attaining the age of 40, the property shall then be paid and distributed to the estate of the person or her trust if any under a power of appointment specifically provided for therein. Beneficiaries may not sell, assign, pledge as collateral, borrow against, or otherwise anticipate their expected inheritance from this trust.*

Look at the last sentence of that directive. In any case where a beneficiary does not receive the inheritance in a lump sum, it is important that they not be allowed to sell or assign their future benefits. There are numerous companies in the business of trying to buy someone's expected inheritance for a substantial discount. If you allow this, then the beneficiary is able to thwart your intentions and may end up wasting the inheritance—exactly what you were trying to avoid. Plus, the company that bought it then becomes one of your heirs.

Following is an example allowing funds to be used for higher education, the idea being that the beneficiary, upon graduating from high school, can either go on with her education, which would be paid for by the trust, or wait until a later age to collect the inheritance. This creates a strong incentive to get education or job skills.

*If any Beneficiary (including but not limited to a grandchild, if any) is under the age of 25 years when the distribution is to be made, the Trustee shall retain any such property and administer and distribute the same for the benefit of the beneficiary, paying to or for the benefit of such person so much of the income and principal of the retained property from time to time, as the Trustee deems advisable for his or her health, education, support, and*

*maintenance. When the person for whom the property is held attains the age of 18 years or graduates from high school, the trustee may distribute funds on behalf of the beneficiary for educational purposes, including monies for living expenses, so long as the beneficiary is achieving passing grades from an accredited university or trade school. When the person for whom the property is held attains the age of 25 years, the remaining property shall thereupon be distributed to him or her free of trust. If the person should die before attaining the age of 25, the principal remaining shall then be paid and distributed to the children of that person, if any, and if none then to the heirs at law of the grantors.*

What if one of the beneficiaries dies before you? Typically, you would direct that the share of that deceased person should instead be given to his or her children and if none then to the other of your named heirs equally. Or you could name another specific person or organization (such as a charity or church) to receive that share.

What if all of the beneficiaries die before you and leave no children? In that case, you need to identify to whom your trust assets should be given.

Leaving something to an organization is one option. If you do this, be sure to include the exact name of the organization and its address. Leaving something to “Cure Cancer” or heart disease of some such generic wording is a bad idea. There are hundreds of charities that purport to be for curing diseases. Not all are legitimate, so be specific as to which organization you mean.

Should you use dollar amounts or percentages? Sometimes things change, especially financial circumstances. That is why I recommend percentages rather than dollar amounts when you are making your distribution plan, unless the amounts are modest.

Here’s an example: I had a client named Tom. He was a single man who owned his own home outright and who had about \$900,000 in other assets. He had two sisters and a brother but had no children. Tom was also very active in his church and directed that at his death, \$300,000 was to go to his church with the balance being divided equally among his siblings. Several years later, he took ill, lost his job, spent down his savings, and mortgaged his house but unfortunately did not change the distribution plan in his trust. At the time of his death, the equity in his house and the remaining liquid assets totaled roughly only \$350,000. So after his funeral expenses and final medical bills the entire balance of his estate went to the church with none left

for his siblings. Tom's intent was to leave the majority of his assets to the two sisters and brother, not the church; but because of the way his trust was written, the church legally got everything. The sisters and brother, who were my clients, were not happy. Had he instead given the church one-fourth of the assets rather than a specific dollar amount, then he would have had a result more consistent with this wishes.

That's not to say you can't, for example, leave \$1,000 to each grandchild for instance. Just remember what you have done and keep you trust distribution in line with your current assets.

Who do you want to make medical decisions for you if you are unable to do so for yourself? Medical directives are very important, and most states even have fill-in-the-blank approved forms available at hospitals and libraries or online. Having a named medical decision maker is crucial if the person you want is not a legal spouse, parent, or child. Your nonrelated partner may have nothing to say about your treatment and in fact may not even be allowed to see you in certain hospital emergency or critical care situations. Note that the medical power of attorney is not the same as the so-called "living will," which states your desires in making end-of-life decisions.

Husband choices	Wife choices
1. _____	1. _____
2. _____	2. _____
(Alternate)	
3. _____	3. _____
(2nd Alternate)	

Do you have an existing trust or will? If so, take a copy to the attorney. He may amend or replace the documents, but having a look at what you have now will be helpful.

Also take the attorney copies of the deeds to all real estate you own as well as the first page of any land contracts.

If you are a member of a prepaid legal plan, please be sure your attorney is a participating member of that plan, since your legal fees may be covered by that plan all or in part.