

Legal Considerations as One Approaches the End of Life

In general, upon a person's death, property transfers to the person's surviving relatives through joint ownership with right of survivorship, a designation for the asset (known as a Transfer upon Death or Payment upon Death), or a Will.

Bank Accounts, Investment Accounts, Real Property (house, condo, land), Cars and Boats can be jointly titled with the right of survivorship. Jointly titling these assets with a spouse means that in life both spouses own the property, and the surviving spouse immediately becomes the sole owner of the asset upon the death of the other spouse. In TOD and PODs, one person is the sole owner and upon their death the property immediately transfers to the designated beneficiary. The advantage of these designations is that the asset is immediately available to the beneficiary providing the flexibility to do what they feel is necessary at the time. There is no need to wait until the estate is settled. These assets pass outside of the will. Utilizing these designations does not prevent debt collection or avoid incurring estate taxes. Credit dies with the person and is not transferable. If you are an authorized user of a credit card, the card is no good once the holder of the card dies.

The three Legal Documents everyone needs:

1. Will
2. Legal Power of Attorney
3. Living Will/Healthcare Representative Designation. https://portal.ct.gov/-/media/ag/health-issues/your_rights_to_make_healthcare_decisions.pdf?rev=7b0347d93ab44becb2e31b53ce82b550

Without a will the State will determine how any assets that are not jointly held or have a TOD or POD designation are distributed. **The State of Connecticut provides the following:**

1. If you have a spouse and children. The spouse receives the first \$100,000 plus half of the remaining balance. The remaining half is

divided equally among the children. (It is different if there is a 2nd marriage).

2. If you have no children but have a parent living, the first 100,000 goes to the spouse plus half of the remaining balance. The other half goes to the parent or parents.
3. If you are single but have children, it goes to the children. If you have no children but have parents, it goes to the parents. If no parents and no children, then to siblings.

Reasons to have a will:

1. Designate how the property is to be distributed. Often the way the intestate laws will distribute the property is not how the deceased would want the property distributed.
2. Designate an executor.
3. Wish to leave assets to minor children. Usually this is done through a trust that is created in the will. In CT if a minor inherits assets over \$10,000 outside of a trust, the probate court will appoint a guardian of the estate to protect the interests of the minor. The guardian will remain in place until the minor is 18. This can be expensive and burdensome. A will can create a trust so that assets can be left to a minor and there is no ongoing court involvement.
4. If the estate will possibly be subject to estate/inheritance tax, the will can set things up to minimize the tax again through a trust. Connecticut is one of a minority of states that imposes a state-level estate tax (on top of the federal estate tax) on estates in excess of certain thresholds. The thresholds for estate/inheritance taxes at both the state and federal levels change often. A good will assumes one is subject to these taxes and sets things up to minimize them.
5. If there are minor children, you can designate a guardian of the person to raise your children. As Christians the person or persons that you wish to designate may well be different than the courts or extended family may anticipate.

It is best to hire a lawyer to draft a will. The lawyer will review your situation and can ensure that the will achieves your objectives. Parents need to have a will. Once a will is drafted, it usually doesn't need to be changed. Hiring a lawyer to review your situation and draft all of these documents should cost about \$2000. I highly recommend using a lawyer if

possible. Having said that, having a will is better than no will. Legal Zoom or other such services cost about \$300. A holographic will is not legal in Connecticut. A will becomes a public record once filed by the executor.

Power of Attorney – this allows the person who has the power to act on your behalf in legal situations if you are incapacitated. E.g. - They can legally sign a check and pay a bill. This does not have to be an end of life but applies anytime you are incapacitated.

Living Will/Healthcare Representative: A Living Will only applies at the end of life and allows you to specify your wishes regarding resuscitation, artificial respiration and the artificial provision of food and water. It can be difficult to know when the end of life is approaching. A Healthcare Representative can be designated and convey your wishes whenever your physician determines you are incapacitated. You can also name a conservator for the court to appoint, if and when the court determines a conservator is necessary. According to the Probate Court of Connecticut, “There are two basic types of conservatorships to accommodate the different needs of individuals. A ‘conservator of the person’ is appointed to supervise the personal affairs of an individual who is found by the court to be unable to meet essential requirements for personal needs. These needs may include, but are not limited to, food, clothing, shelter, health care and safety. A ‘conservator of the estate’ is appointed to supervise the finances of an individual who is found by the court to be incapable of managing his or her own finances. This may include, but is not limited to, actions to manage assets, income and public assistance benefits.

The link listed above is a booklet from the State of CT that explains these different roles and provides the forms for you to designate who you would like to serve in these roles. You do not need a lawyer for the Living Will/ Healthcare Representative but can just fill out these forms and execute them. Please note that in some cases witnesses and a notary are necessary.

Some other Considerations:

Have a file that includes three documents above and lists all the major assets and how to access them. See the list Stacy has provided.

Conversation: The most important thing is to tell someone about where these documents are stored and how to access them. It does no good to put all of this in place and then no one knows it is there! If possible have a conversation with your family now to let them know your preferences upon death, possibly the provisions of the will and anything that might create disharmony going forward.