

Your Estate Plan

***Prepared By
Rinke Noonan Law Firm***

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Your Estate Plan

The Rinke Noonan Estate Planning Department provides high quality legal services to assist you with the allocation and distribution of assets, transfer of wealth and the analysis of tax rules to ensure that you and your loved ones are protected and that finalizing your affairs is as easy as possible.

We assist individuals with drafting wills, transferring property to the next generation and handling issues of incapacity. Whether you are addressing general estate planning, elder care issues, disability planning, or minimizing gift and estate tax consequences, our estate planning attorneys are dedicated to providing clients with effective solutions to ease your mind when considering the difficult questions surrounding estate planning.

Our focus is on working with our clients to design individualized solutions that address the clients' specific goals and concerns regarding their families, their care and their assets. We look forward to meeting with you to discuss your life and determine how we can best protect what is most important to you, both during your life and after.

What's all the fuss about Probate?

Probate is the court process by through which the personal representative is appointed to handle the affairs of the estate, such as paying the expenses of the estate, and distributing the assets according to the will. Probate assets are those that are generally titled in just the deceased person's name and which must go through the probate process to be transferred. Probate assets are transferred according to the terms of your will or according to intestacy law if there is no will. Non-probate assets include those that are owned jointly with another person or which name a beneficiary or payable on death recipient. Non-probate assets are not affected by the terms of your will but pass directly to the joint owner or beneficiary designated.

A probate requires a formal filing with the Court admitting the will and beginning the process. The personal representative may be required to appear in Court. During the probate process, there is a requirement of a four month period of time in which creditors may make a claim against the estate. While the creditor period is four months, the average time for completion of a probate is closer to one year. All documentation provided to the Court as part of the probate, including an inventory of the assets of the deceased, is public record.

The expenses associated with a probate include filing fees with the court and attorney's fees associated with the preparation of documents and attendance of required appearances. Minnesota is NOT a percentage probate state and there is no minimum required portion of the estate which must be paid to the Court or the attorney. The average cost of a probate is approximately \$3,000-\$5,000.

Wills

Wills allow you to set out your wishes to protect the people you care for and the assets you have accumulated during your life. A will is the instructions for a probate and does not prevent a probate. On the contrary, a will only carries legal validity if admitted to court for probating.

A Will allows you to:

- Name guardians for your minor children;
- Designate fiduciaries, such as personal representative (also known as the executor), trustee, or custodian;
- Determine who receives your property;
- Control the timing of distributions by incorporating trust provisions (for example holding property for your children until they are age 25); and
- Capitalize on tax advantages

If you die without a will, your estate will be subject to state law regarding who inherits your property. While your assets may still be subject to a probate, you will not be in control of the decisions regarding your estate.

A properly drafted will can minimize the cost and complexity of the probate process. Many provisions of a will are designed to provide the personal representative flexibility and simplicity, and to avoid unnecessary oversight, documentation and expense.

The personal representative will locate your assets, manage those assets while held in the estate, ensure that your property gets to the people you have named, and pay all of your last expenses, so it is important to choose someone who can navigate these financial issues.

Revocable Trusts

A Revocable Trust is created by a document that contains many of the provisions of a Will. It is a separate legal entity designed to hold some or all of your assets. The Trust can generally be changed or amended by the client at any time.

Some of the key advantages of a trust are:

- Assets held in a trust may be transferred upon death without the requirement of a probate; thereby avoiding the cost, delays, court administration and public disclosures that go along with a probate;
- Assets held in Trust are controlled by a trustee. A back-up trustee can immediately take over management of the trust assets if the client is unable due to injury or illness. This can be especially vital in the case of business or land owners who need to ensure that someone will have authority to keep their operations running;
- A trust may incorporate tax planning to maximize available tax exemptions and minimize the potential tax liabilities upon the client's death; and
- The distributions to be made from the trust may be subject to certain time or purpose specifications, such as distributions for college expenses or distribution when the child reaches age 30.

Prior to distribution, the assets are managed by the Trustee. Most commonly, you are the trustee of your revocable trust. During life, the client notices little difference in the character of his or her assets from a control or tax standpoint. A successor trustee is named to handle the assets pursuant to the trust terms at the time the client is no longer able to handle his or her affairs.

Powers of Attorney

A Power of Attorney is a document in which one person gives to another person(s) the authority to act on their behalf in regard to various financial matters.

If you were to be seriously injured in an accident or develop a degenerative condition and became unable to make your own decisions regarding your finances, who will handle your affairs? How do your mortgage and the utility bills get paid? How do those who depend on you get the resources they need? Who will maintain your portfolio?

Without a Power of Attorney, it will be necessary for someone to go through the court process of obtaining a conservatorship to manage your affairs. This process is much more time consuming and costly than preparing a Power of Attorney. Also, when you draft a Power of Attorney, you choose the person(s) who handles your affairs.

The scope of the authority will depend on the wording of the Power of Attorney. A Power of Attorney generally grants authority regarding real property and personal property transaction, such as:

- Banking transactions;
- Real estate transactions;
- Business operating transactions;
- Insurance transactions; and
- Gift transactions.

A financial Power of Attorney cannot be used for health care decisions. In Minnesota, a health care directive is needed for health care decisions.

Health Care Directive

A Health Care Directive is a legal document which combines the elements of the living will and the durable healthcare power of attorney.

It is designed to allow you to choose the individual(s) who will make decisions on your behalf regarding your healthcare decisions if you are unable to speak for yourself, and/or to provide instructions and set forth your thoughts on care in various situations.

A Health Care Directive includes information on basic healthcare decisions as well as the appointment of one or more health care agents. The instructions cover issues including:

- Directions to joint health care agents regarding decision-making process of agents;
- Instructions regarding artificially administered nutrition or hydration (tube feeding);
- Limitations on agent's right to receive, review or consent to release of health care records; and
- Instructions regarding intrusive mental health treatment.

The Health Care Directive can also include post death instructions, including wishes to be an organ donor and funeral directives.

Other Options

We have many tools to meet your planning goals depending on your situation, goals and assets.

- ***Life Estate.*** A life estate transfers ownership of real estate to others while ensuring that you have the continued rights and obligations relating to the property during your life. This serves to transfer some value to your loved ones while allowing you to maintain present control. Upon the life tenant's death, the property transfers to the other owners without the requirement of probate.
- ***Transfer on Death Deed.*** A transfer on death deed operates much like a beneficiary designation for real estate. It is an actual deed, recorded on the county records which specifies who will inherit title to the property upon your death. It does not transfer any interest in the property during your life so the property may be sold in the discretion of the owner. The transfer on death designation may be removed or changed at any time during the owner's life (provided they continue to be legally competent to make decisions).
- ***Family Entities.*** Entities, such as partnerships or LLCs can assist a family unit in the joint ownership of property. Certain entities not only create an effective way to manage the property (i.e. one family member with authority to pay real estate taxes or contract for insurance), but can also have significant tax benefits and liability protection if properly utilized.

Medical Assistance

The statutes and regulations governing payments for nursing home care and long term care services are rigorous and complex. We are commonly asked by your clients to explain the process and rules relating to obtaining governmental assistance. How do I become eligible for these programs? Will the nursing home take everything I've built? Who will be responsible to pay for my care in the future? These types of questions arise as part of the general planning process, as well as when a loved one is anticipating the need for nursing home services. Our attorneys often work with clients to answer these questions. We address advanced planning for clients with concerns about how to best pay for future care and retain the assets they have accumulated over their lifetime. We also work with clients to ensure that they have access to the programs and assistance they need in a time of transition.

How to Get Started

We have enclosed an Estate Planning Worksheet with this informational brochure to give you an idea of the initial information needed to begin the discussion on estate planning. While additional information may be needed, this worksheet provides the basics to be considered in structuring a plan. Through the information contained on this worksheet, we can begin to analyze your personal situation and goals to develop an estate plan to achieve your goals and objectives. We would value the opportunity to meet with you and discuss how we can assist in providing peace of mind for you and your family, now and in the future.

Estate Planning Worksheet
GENERAL INFORMATION

Name

Date of Birth _____

U.S. Citizen? Yes _____ No _____

Spouse's Name _____

Date of Birth _____

U.S. Citizen? Yes _____ No _____

Contact Information:

Address _____

City _____ State _____ Zip _____

County _____

Mailing Address (if different from above)

City _____ State _____ Zip _____

Phone: Home _____ Work _____

Cell _____

1. Children (please list all). (Use back or attach a separate page if more space is needed):

Name	Date of Birth
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

a. Whom would you like to serve as the guardian of your minor children?

b. Have any children received an advance on their inheritance or are any children financially indebted to you?

c. Is there any reason to treat your children other than equally?

d. Are any of the children under a disability?

2. Who should be Personal Representative (“Executor”) of your estate? (A Personal Representative is responsible for probating your Will, paying your debts, collecting your assets, and settling your estate.)

a. **First Choice:** (spouse is normally named first):

b. **Alternate:**

Address:

c. **Second Alternate:**

Address:

3. Disposition:

- a. Do you have any specific gifts of money or property you would like made in the will?

- b. Do you wish to leave money to charities?

- c. How would you like the remainder of your assets distributed? (ie, First to spouse and then to kids equally)

- d. Should the money for your children be held in Trust? Until what ages? (i.e. 1/2 distributed at 25, the rest at age 30)

- 4. Trustee:** Who should serve as the Trustee to invest, distribute and control the money held for your children?

Alternate:

- 5.** Is there any other provision you would like in your will(s) that has not been covered on this form?

6. Are you interested in preparing a Power of Attorney which grants another person the power to act on your behalf, to manage your assets and pay your bills, if you become incompetent or unable to sign your name?

a. **First Choice:**

Address:

b. **Contingent:**

Address:

7. Are you interested in preparing a Health Care Directive stating your preferences for health care if you are in a terminal condition?

8. Do you have a financial planner, accountant, investment advisor, and/or insurance agent?

If yes, please provide names and addresses:

To review your estate plan and design the structure that best meets your goals with regard to your family, your care, and your assets, call us today to set an appointment with one of our estate planning attorneys. We will review the Estate Planning Worksheet with you and discuss what is most important to you to ensure that your loved ones are protected and that your personal affairs are in order.

To review your estate plan and design the structure that best meets your goals with regard to your family, your care, and your assets, call us today to set an appointment with one of our estate planning attorneys. We will review the Estate Planning Worksheet with you and discuss what is most important to you to ensure that your loved ones are protected and that your personal affairs are in order.



RINKE NOONAN

attorneys at law

Suite 300, US Bank Plaza
1015 West St. Germain Street
P.O. Box 1497
St. Cloud, MN 56302
Phone: (320) 251-6700
Fax: (320) 656-3500
www.rinkenoonan.com