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Estate Planning Checklist?

Take this simple test to see how your Estate Plan measures up.

(Note: If using a Desktop or Laptop computer, you may take the test by clicking the appropriate answers directly onto your computer screen)

Yes No Don't
Know

1. Have you signed a *Will* or *Revocable Living Trust*?

If not, then you may be relying on (a) the law passed many years ago by the Illinois legislature to determine to whom, how and when your property and assets will be distributed, (b) who will be in charge of administering your Estate, and (c) a Probate Court Judge to name the person(s) who will act as Guardian(s) for any minor children you have.

2. Have you signed a *Financial Power of Attorney*?

If not, it may become necessary to have a Guardian appointed by the Probate Court to represent you in financial matters if you ever become incapacitated as a result of an illness or accident.

3. Have you signed a *Health Care Power of Attorney*?

If not, the person who will make health care decisions for you if you are ever unable to do so yourself may be a different person than the one you would want to make such decisions.

4. Have you signed a *Health Care Memorandum*?

This document provides the health-care decision makers you name in your **Health Care Power of Attorney** with your instructions as to how you want health-care, and end-of-life, decisions to be made on your behalf—i.e., it acts as a “road map” for your health-care decision makers.

5. If you have signed a *Revocable Living Trust*, does it include (a) an understandable test to determine if you are ever incapacitated, as well as (b) your instructions for your care, and the care of your loved ones, during any period in which you may be incapacitated?

6. Have you reviewed your estate plan in the past 3 years?

Not only do your family and financial conditions change, but the laws themselves often times change. For example, on December 22, 2017, the Federal Tax Cuts and Jobs

Yes No Don't Know

Act was passed. This law will affect many estate plans. In addition, the manner in which third parties deal with existing laws can change. For example, some third-party institutions are now taking the position (without any support in the law itself) that Powers of Attorney become stale with the mere passage of time. As a result, we now recommend that these short Powers of Attorney be re-signed with a current date as a method for avoiding this potential problem. *Please remember:* keeping your estate plan up to date, and your property and assets properly funded, are the only tried and true methods for ensuring that your estate plan will work as it has been designed.

7. If you wish to avoid probate, are you absolutely certain that you have taken the steps necessary to do so?

Please remember: Probate can apply not only upon your death, but also if you ever become incapacitated. We encourage you to make a list of each asset you own, and review the method(s) you have used to ensure that each such asset will avoid probate. Assets owned by you and one or more others as “joint tenants with right of survivorship”, or your principal residence owned by you and your spouse as “tenants by the entirety”, can avoid probate upon the death of the 1st joint owner to die; however, probate may still apply upon the subsequent incapacity or death of the last surviving joint owner. *Death Benefit Assets* such as life insurance, annuities, IRAs, and retirement plans can avoid probate **IF** at least one of your designated beneficiaries survives you; however, probate may still apply upon the subsequent incapacity or death of a designated beneficiary. *All Other Assets* that are titled in your name alone and for which there is no surviving beneficiary will be subject to probate.

8. Have you included provisions in your estate planning documents that will avoid the necessity to have a Probate Court Guardianship opened to receive an inheritance left directly to a minor?

In Illinois and 46 other states, a minor is someone who is younger than 18. A minor cannot Inherit property or assets directly. If property or assets are left directly to a minor, then it will be necessary for a Guardian for the minor beneficiary to be appointed by the Probate Court to receive such property or assets. With proper planning, you can avoid such an undesirable result.

9. Are all of your intended beneficiaries who are 18 years of age or older financially experienced and responsible, and otherwise mature?

Beneficiaries in Illinois and 46 other states who are at least 18 years old are adults. As a result, in the eyes of the law these beneficiaries do not need the assistance of anyone to make intelligent financial decisions on their own. In our experience, the vast majority of beneficiaries, including both younger and older adults, have little, if any, financial experience, and many have no interest whatsoever in financial matters. Leaving property or assets directly to these adult beneficiaries can often be disastrous.

10. Do you own any property or assets titled jointly with someone who is not your spouse, such as a child, other relative or friend?

Yes No Don't Know

11. Have you included provisions in your estate plan that can protect your spouse, children and other intended beneficiaries from divorcing spouses and other creditors?

12. Are you satisfied with the persons, and or institution, you have named in your estate planning documents to act as Trustee(s), Executor(s), Agents under your Powers of Attorney, and Guardian(s) for any minor children?

13. Have any of the individuals you have named as Trustee, Executor, Agent under a Power of Attorney, or Guardian, experienced any personal, family or financial changes?

14. If you are married, have you and your spouse taken advantage of the creditor protection features available by having your principal residence titled in your names as *Tenants by the Entirety*?

15. With respect to any *Death Benefit Assets* such as life insurance, annuities, IRAs, and Retirement Plans, have you named at least one Primary Beneficiary, and one or more Contingent Beneficiaries?

16. If any of your intended beneficiaries are now facing, or more importantly, might in the future face, any of the *Special Circumstances* described below, have you included provisions in your estate planning documents that authorize the Trustee (even after your death) to transfer the beneficiary's inheritance into a separate trust that can protect the beneficiary? These *Special Circumstances* include a beneficiary who

- (a) is now, or could in the future, become subject to *Creditor Claims*,
- (b) is now suffering, or could suffer in the future, from an *Addiction*,
- (c) is now suffering, or could suffer in the future, from an *Uncontrolled Behavioral Condition*,
- (d) is now, or could become in the future, a beneficiary with *Special Needs*, or
- (e) is now, or could become in the future, *Unable to Manage Distributions Properly*.

Note: If you answered "Yes" to Question 10, or "No" or "Don't Know" to any other Question-- i. e., if you are using a Desktop or Laptop computer and any "answers" appear--we recommend that you meet with an experienced estate planning attorney who can assist you in either establishing and implementing an effective estate plan, or in revising your existing estate plan.