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Frequently Asked Questions (FAQ)

Q: What is a Last Will and Testament?

A: A Last Will and Testament is a written legal document stating how an individual's property is to be distributed after his or her death. Kansas law requires that for a will to be valid, it must be formally executed as required by state law and the individual executing the will must be at least 18 years of age and have legal capacity.

Q: Can a person change his or her Last Will and Testament?

A: An individual may change his or her Last Will and Testament, making either additions or deletions to his or her existing Will by a codicil. A codicil is a document, also executed in the same manner as a will, noting the changes to the individual's Last Will and Testament. Alterations to an existing will, such as crossing out language or adding a new provision, do not meet the legal requirements for executing a valid will, and therefore, will not result in a successful modification of the will. Further, crossing out the language and inserting new language may subject the individual's Last Will and Testament to uncertainty as to whether it remains valid.

Q: Are there any limits on a Last Will and Testament?

A: A Last Will and Testament will not override a beneficiary designation on a retirement plan, life insurance policy, or property which you hold as joint tenants with rights of survivorship and not as tenants in common.

Q: What are the typical documents that make up my estate planning?

A: Each client's situation is unique, but generally a client that has estate-planning documents will have a Last Will and Testament, a General Durable Power of Attorney, a Durable Power of Attorney for Health Care Decisions, and a Declaration (or Living Will). Many individuals will also have a revocable trust. If an individual has a revocable trust, then their Last Will and Testament is a pour-over will or a short will that transfers

any property to the revocable trust that is not otherwise titled in the name of the trust or that passes by operation of law. In addition, we will review the title to other assets the individual owns— such as title to real estate and beneficiary designations on retirement accounts, life insurance policies, and annuities. A thorough examination of the client's assets, including how such assets are titled, and how they would like to have their assets distributed at their death allows the individual to be assured that their property will pass to their loved ones in the most efficient manner with the least amount of tax.

Q: What is a revocable trust?

A: A revocable trust (sometimes referred to as a *living trust*) often serves the same purpose as a Last Will and Testament. The revocable trust contains instructions about distributions of the assets during the individual's lifetime, and how property will be distributed at the individual's death. As the name implies, a revocable trust is one that can be changed and in which you may add assets to the trust or take assets from the trust. If you establish a revocable trust, we will also prepare a pour-over will or a short will that simply transfers any property to the revocable trust that is not otherwise titled in the name of the trust or that passes by operation of law.

Q: If I am married, can my spouse and I have one revocable trust or do we each need our own revocable trust?

A: If a married couple has total assets (including the death benefit on life insurance and retirement account values) that are unlikely to exceed the federal estate tax exemption amount, in most instances they can have one revocable trust. If a married couple has assets that could possibly exceed the federal estate tax exemption amount, then our lawyers recommend that each spouse have his or her own revocable trust and pour-over will. Each individual situation is unique, and depending on your situation, we will make specific recommendations.

Q: If I have a revocable trust, will it permit me to avoid probate at my death?

A: If your assets are titled in the name of your revocable trust, held in joint tenancy with rights of survivorship, or have beneficiary designations (such as life insurance policies and retirement accounts), then you generally can avoid probate of your estate at the time that you pass away. We can advise you on the manner in which you should hold assets, in a revocable trust or otherwise, so that it best suits your needs and will permit you to avoid probate if you desire.

Q: Are there advantages to estate planning other than making certain that my property passes to whom I would like at the time I pass away?

A: Although estate planning allows an individual to direct how his or her property will be distributed at the time of their death, it also includes a number of other aspects. For example, an important goal of estate planning is to protect the assets and the income from claims of any creditors of a beneficiary. This can be done by establishing a trust for the

benefit of an individual, rather than distributing property outright to that individual. In addition, an individual can name who will be the guardian or conservator of minor children in the event both the husband and wife pass away. For elderly individuals, they can address who will provide for their needs in the event they become incapacitated and it is necessary to appoint a guardian and/or a conservator. Also, proper estate planning will allow individuals to minimize or eliminate federal and estate death taxes that may be imposed on their estate. These are just a few of the many advantages that are gained by proper estate planning. If you would like to protect your assets, both during your lifetime and for future generations, please call us at 316-263-8296 today to schedule an appointment with one of our lawyers.

Q: What is a General Durable Power of Attorney?

A: A General Durable Power of Attorney is a legal document in which you (the principal) designate one or more individuals (the agent or attorney in fact) to act on your behalf. A General Durable Power of Attorney may either be effective immediately, or may come into effect upon a certain event, such as your disability. Your agent is able to act on your behalf in circumstances where you are not legally able to act. A General Durable Power of Attorney will continue in effect if you, as the principal, become mentally incapacitated.

Q: What is a Durable Power of Attorney for Health Care Decisions?

A: Kansas law provides that you may establish a Durable Power of Attorney for Health Care Decisions in which you authorize one or more individuals to make medical decisions on your behalf in the event you are not able to make that decision for yourself. It also provides that the individual that you appoint may arrange for funeral services for you in the event it is necessary.

Q: What is a Declaration (Living Will)?

A: A Declaration or Living Will is a written statement of your wishes regarding medical treatment in the event you are faced with a terminal medical condition. This document can be used by your doctors and your agent for health care decisions to make difficult decisions regarding life support, tube feeding and similar medical treatments.

Q: I am considering selling my home. What do I need to consider before putting my home on the market?

A: Your very first item of business should be to obtain a quality seller-oriented purchase contract. To do this, you will need to give some thought to what your terms of sale will be. You should decide upon a purchase price (both an asking price, and your "bottom-line"), an ideal closing date and what types of contract contingencies you are willing to accept. You should also determine what your earnest money requirements will be and what title company you intend to use. A typical and appropriate earnest money requirement would be from two to five percent of your asking price.

In addition to the actual contract terms, you should also attempt to put together a written disclosure sheet regarding the condition of the property that can be provided to prospective buyers along with the contract. Any defect of which you have knowledge should be disclosed on this sheet. A good rule of thumb is to err on the side of disclosure. It is better to disclose a defect than to be forced to deal with a later claim by a buyer that you failed to disclose something you "should" have. A great deal of care will need to be used in putting together the disclosure sheet. You should avoid the temptation to give this activity less than your full attention.

We would welcome the opportunity to construct a contract and form of disclosure sheet that will fit the specific needs of your particular transaction.

Q: What are typical contingencies that might be requested by buyers in a residential real estate transaction?

A: Contingencies may be important to some buyers. In contrast, sellers will seek to avoid contingencies. As a practical matter, however, most buyers will want at least one contingency, the most common being financing. The following are some guidelines for various contingencies that may arise:

Financing - This contingency should provide for the buyer to formally apply for financing within a short time (3 to 5 days) of full contract execution and to diligently pursue his application. The contingency should specify in general terms the interest rate and type of loan the buyer is seeking. A typical description might be: "a firm commitment for a new purchase money mortgage from an institutional lender, in the principal amount of at least \$_____ at the market rate of interest and points." A drop-dead date for the buyer's financing to be approved should also be included.

Pre-Qualification - If the buyer has a buyer's broker, it is advantageous for both buyer and seller to enlist the broker's assistance in having the buyer pre-qualify for a loan and eliminate the need for a financing contingency.

Other House Sale Contingency/Delayed Closing - Some buyers may want to condition their purchase on the sale of their existing home or delay closing for several months. Sellers view these provisions as undesirable for obvious reasons and usually seek to avoid them. Their effect can be mitigated to some extent if, in exchange for granting the contingency, the seller is allowed to retain the right to continue marketing the property. If another offer is received, the buyer would be entitled to a short period to decide whether to proceed with the purchase or be forced to release the home for sale to the other purchaser.

When considering or implementing contingencies in a contract, we strongly recommend that you have an attorney review the contract to make certain the provisions will accomplish the intended result.