Estate Planning Summary
for Missouri Residents

This is a memorandum for estate planning clients who are Missouri residents. It is intended to explain the major areas of decision-making and some of the strategies for making decisions. The focus will be on ways to achieve both time and money savings for clients and for their intended beneficiaries. I favor the simplest and least costly methods for achieving clients' goals. Other assumptions used in this summary are that the client wishes to achieve peace of mind and achieve or encourage peace within the family. These are common but not universal goals. Deviation from some of what is described will be necessary to deal with specific circumstances or goals.

Recent changes in the law

Both federal and state laws have changed within the past few years in dramatic ways that affect estate planning. The original version of this memo was written in 2003, and it has now been revised many times since, to reflect changes in the relevant federal and Missouri laws. You should ask about significant changes if you're reading this later than the first half of 2020. This is because additional changes may be made by Congress or by the Missouri General Assembly. Only the most sweeping and important changes will be discussed here. The net effects of the changes already made are to simplify estate planning for many people and to increase enormously the amount of wealth that may be transferred without being taxed, but in cases of great wealth these changes may complicate estate planning and might mean that prior estate planning should be revised.

Federal law is what primarily regulates the field of estate and gift taxes. Missouri still has an estate tax in its statutes, but it is keyed to the state tax credit available under the federal estate tax, and no such credit is available now, so the Missouri Department of Revenue at present doesn't even accept estate tax forms. Here's a brief summary of the major aspects of federal tax law that applies to estate planning on or after January 1, 2018, when the most recent overhaul of the United States Internal Revenue Code took effect, supplemented with a few subsequent inflationary and other adjustments.

Each taxpayer can pass $11.58 million (as of January 1, 2020) in assets to individual beneficiaries, either as lifetime gifts or as transfers that happen at death, such as to beneficiaries under a will or trust, without incurring any estate or gift tax. This amount is indexed to inflation, so it will adjust in future years. All amounts in excess of the tax-free amount are subject to a 40% tax. For married couples, there is a "portability" function that allows the second spouse to die to use his or her own exclusion and any portion of the other spouse's exclusion that went unused. Thus, a married couple with $23.16 million or less in assets can avoid all federal estate taxes by owning everything jointly and letting whoever dies second dispose of it all. This practically eliminates the prior strong tax-saving motivation for married people in this wealth range to divide their assets into two piles (such as two trusts) so that each could fully use the exclusion from the estate tax. If you are in this wealth range and married, however, be aware that certain technical requirements must be met at the first death in order to qualify for use of "portability" at the second death.

Be aware, however, that under the recent tax code overhaul, the exemption amounts discussed in the prior paragraph are scheduled to expire effective January 1, 2026, and revert to

2017 levels (exempt amount per person of $5.490 million), adjusted for intervening inflation.

Beneficiaries will continue to have their income taxes affected differently depending on whether they received non-cash assets as lifetime gifts from the prior owner or as inheritances when the prior owner died. Although neither a gift nor an inheritance is itself treated as income to the recipient, at the time the asset is later sold, it may generate a capital gain tax obligation. A person's tax "basis" is the number subtracted from the sales proceeds to calculate the gain realized by that person when he or she sells an asset. Such gains are considered taxable income of the seller, but are subject to special tax brackets. For those single people with less than $40,000 of income and for married couples with income of less than $80,000, the capital gain tax rate is zero. Single people with incomes between $40,000 and $451,500 owe taxes on capital gains at !5%, and above that level of income owe taxes on capital gains at 20%. For married people with incomes between $80,000 and $496,600, the rate of tax on such gains is 15%, and for those married couples with higher annual income, it is 20%. If the asset was acquired by the person as a lifetime gift from another, the tax basis at a later sale by the recipient that is subtracted from the sale proceeds to determine the gain that is subject to the capital gain tax is the same tax basis the asset had in the hands of the person who made that lifetime gift to the seller. This is called "carryover basis." Assets that are inherited from someone at his or her death, however, get a "stepped-up" basis to fair market value on the date of death of the person from whom the seller acquired it. Thus, if Parent buys 40 acres of land for $40,000 and, nearing death, wishes to pass it to Daughter, but it is now worth $400,000, if Parent gives it to Daughter just before dying, upon a quick sale of the property for $400,000 by Daughter, she will owe a capital gain income tax on a taxable gain of $360,000 (approximately $54,000 or $72,000 in taxes to the IRS under the current federal capital gain tax rates of either 15% or 20% depending on overall income, plus $19,440 to Missouri under its current 5.4% tax rate). On the other hand, if Parent leaves the land to Daughter at death, and she promptly sells it for $400,000, under rules now in effect, Daughter will incur no capital gain income tax at all, and this approach by Parent could save Daughter as much as about $91,000 in income taxes, depending on other considerations. (Note that there is also a net investment income ("Medicare") tax of 3.8% for some with higher incomes.

The preceding example, however, does not work to save overall taxes for unmarried individuals with more than $11.58 million or couples with more than $23.16 million, since the estate tax on the excess is 40%. In that situation, a gift, even with a "carryover" rather than a "stepped-up" basis, might make tax-planning sense, since the total capital gain rate may be around 25% compared to the estate tax rate of 40%. This last statement has application under current law only if lifetime gifts subject to the gift tax total less than $11.58 million per taxpayer, the exempt amount. For people in the wealth range that will trigger estate taxes, even making gifts that trigger a gift tax because they total more than the exempt amount may make sense because at least the gain in value between the date of the gift and the date of the giver's death can escape inclusion in the taxable estate calculations at the death of the giver.

Federal law also has an added "generation-skipping tax" that applies if, for example, a grandparent makes gifts to grandchildren while their parents are living, but it applies only if the total of such transfers that skip one or more generations, made during lifetime or at death, exceeds $11.58 million from the grandparent.

As noted above, the recent overhaul of the federal tax code has several provisions that have

"sunset" dates set, after which the tax structure is scheduled to revert to 2017 rules (with the exempt amount roughly halved) unless Congress acts to stop that. My personal observation is that over the past 30-plus years Congress has displayed a remarkable lack of will to allow even scheduled increases in taxes to actually take effect. The political climate early in 2020, however, seems to present a higher likelihood that such willpower might be mustered, at least as to taxing the very wealthy.

Missouri law controls wills, trusts, and inheritance. In the 1990s, Missouri was the leader in developing a new way of passing property at death, called non-probate transfers. This is encountered most often in the form of POD ("pay on death") or TOD ("transfer on death") designations on documents of title. Under this law, the owner (or the last to die of joint owners) can designate beneficiaries to become the owners by operation of law at the instant the last present owner dies. This is accomplished for real estate by recording what is called a Beneficiary Deed, which takes effect on the death of the last surviving joint owner but has no effect until then in restricting the owners' ability to sell or give away the property. Missouri law is now clear, after revisions, that virtually everything may have beneficiaries designated to become owners in this way. Any property as to which this law is properly used jumps to the beneficiary on the death of the owner, without regard to anything the owner's will or other estate planning documents say.

Missouri law also experienced a major change when the Uniform Trust Code came into force on January 1, 2005, significantly overhauling and simplifying Missouri's law of trusts. Multiple additional changes have been made in various Missouri laws pertaining to estate planning within the past decade.

Estate taxes

Do you have a concern? First, you must determine whether estate taxes are a worry. If they apply, they will siphon off 40% of a portion of your assets. That portion is the value of assets above the exempt amount, $11.58 million for a single taxpayer and $23.16 million for a married couple.

Which assets generate estate taxes? Regarding this question, I find it helpful to think of the IRS as an enormous octopus with many very long and very strong tentacles. Assets includable in the estate tax calculation involve more than the things that most people think of as their available wealth. Basically, the IRS requires that all assets controlled by a decedent be part of the tally to see whether a tax is due. All real estate wherever located in the world (including time shares, oil and gas interests, fractional shares in a family farm, etc.), all bank accounts, CDs, stocks, Limited Liability Company membership interests and partnership interests, bonds, furniture, clothing, books, art, tools, vehicles, livestock, life insurance proceeds, retirement funds, most trusts you created and many you did not create if they involve you, all non-exempt gifts made during lifetime, everything in which you share an interest (to the extent of your interest), and many things over which you have control without owning them; all this has to be reported on an estate tax return if the total value at that time exceeds the magic number for the exemption in effect for the year of a person's death.

Note that there also is an income tax consideration for retirement funds, especially if those retirement funds consist of deferred compensation or re-directed salary or IRAs (money set aside without first paying income taxes on it). Whoever draws the funds out, whether before or after your death, will pay income tax on them, and such funds also will be included in your taxable estate if the estate tax applies. Sometimes, depending on circumstances, these retirement funds generate

so much in both income and estate taxes that only about 25% of what you think is there survives to benefit your heirs. What has just been said does not apply to what are called "Roth" funds. If you have any retirement funds with the word "Roth" attached to them, you should be sure you know the rules about taxability of those funds. Basically, these are retirement-type funds that are created with money you already have paid income tax on, and the rules permit whoever withdraws funds from them to receive them free of income tax. This freedom from income tax feature applies both to the original amounts invested and to the gain on those investments.

If you make a complete list of all assets you own, have an interest in, or control, following the guidelines given above, and determine that you do not have an estate tax concern (which will be true for almost everyone now), you can skip the rest of this section, all the way to the heading "Probate and its Avoidance under Missouri Law." Be aware, however, that nearly always people are surprised by the total value of assets subject to the potential estate tax when diligence is used in listing all the assets at their full value.

How are estate taxes calculated when they apply? The estate tax calculation, if a return is required, goes like this. All of the assets owned or controlled are listed at their fair market value. Deductions are then taken for all that goes to a surviving spouse if there is one and for all that goes to qualified charities. Both the marital deduction and the charitable deduction are unlimited in amount. If the remainder exceeds the amount that generates a tax in the year of the death, the tax is 40% of the excess over that magic number.

Reducing your taxable estate by giving it away. Spending or giving away your assets until you are under the amount likely to cause an estate tax are strategies that have been used for years. You should never give away or waste what you might need to maintain your desired standard of living. For all kinds of psychological and other reasons, some of which could adversely affect life span, it is unwise to make yourself dependent on anyone else. Under the current law, it would seem that aggressive gift-giving should not be pursued, except for those with very large estates (in excess of $11.58 million individual/$23.16 million couple), and especially if they have short life expectancies. If you wish to pursue such gift-giving, however, the federal gift tax must be considered. Presently, annual gifts of $15,000 to each of any number of recipients are permitted without you or the recipient incurring any tax obligation. Married couples may give $30,000 to each recipient annually, and a married couple may give $60,000 to a married child or grandchild and his or her spouse annually without ever having to complete a gift tax return. These are not absolute limits on gift-giving, they are limits on gift-giving that does not trigger an obligation to file a gift tax return with the IRS. Gifts that qualify as tax-exempt must have no strings attached. They cannot be limited, for example, to education purposes, and they cannot be left in a trust so the beneficiary gets full access to the funds only at a later time, unless the trust fits within very narrow rules. An exception to these rules is a "Section 529 Plan" for funding a beneficiary's education. Also, a person can make direct payment for someone else's medical or certain educational expenses, and such payments are not subject to the $15,000 per year tax-exempt limitation.

For those with extremely large estates wishing to preserve family wealth within the family, consideration might be given to using up the $11.58 million per taxpayer that is presently exempt from both estate and gift tax by giving that amount to descendants without paying gift taxes, thus passing to them all future income and appreciation that the gifted property might generate, and removing that income and appreciation from the present owner's taxable estate. Because current law contains a December 31, 2025, sunset provision on this exemption amount, many wealthy

people probably will consider making such large gifts in 2025, if the law remains unchanged until then. As stated earlier, however, I am dubious about whether Congress will muster the will to allow that sunset provision to take effect, with the large tax increase that will cause. Remember that making such gifts during lifetime is likely to create a larger tax burden on the recipient when the gifted asset is sold because it will carry over the giver's tax basis rather than getting a basis adjusted to current value.

Removing assets from the taxable estate or reducing their taxable value without giving them away. Other methods for reducing the size of your taxable estate are available. Virtually all of them involve things that cannot easily be undone. Examples include irrevocable trusts or establishing business entities such as limited partnerships as to which arm's length business dealing is required. Some of these methods don't actually give up control of the assets, but instead change the character of the assets so that they qualify for discounts in the valuation process because of becoming minority interests or because they are converted into something not readily marketable. Through the years such methods of reducing the value of assets for estate tax purposes have been targeted for disallowance by the IRS via rule-making, legislation, and litigation, with some progress made from time to time. No such strategies should be employed without detailed analysis under current rules and strong confidence in predictions about future developments.

Using deductions to reduce tax. If the estate tax does apply at the time of one's death, it is possible, of course, to use the marital deduction for property passing to a surviving spouse or to use the charitable deduction for property passing to qualified charities to reduce the estate taxes owed. Verbal formulas can be used to require that all assets above the amount that can pass free of estate taxes are to go to a spouse or to a charity. One way of thinking about the charitable aspect of this is that if you are sufficiently wealthy that estate taxes are a concern, some will go to charity. The estate tax law has always allowed one to choose a different charity, but if you make no choice, the IRS is the default charity. Taxpayers with very large estates, when the estate tax law applies, if they direct a portion to charity, are funding that charity's share approximately 40% from the share that would otherwise go to the IRS and 60% by what would otherwise go to the other heirs.

Probate and its Avoidance under Missouri Law

Besides saving estate taxes, the other major way in which informed estate planning sometimes can significantly reduce the cost and work involved in transferring wealth at death is by avoiding or minimizing the involvement of a probate court.

Avoiding probate generally. A probate estate involves appointment by the court of an executor or personal representative, who then collects all the assets, lists them for the probate court, pays all of the decedent's bills and taxes and the costs and fees of the probate estate, and then distributes the assets to the heirs. The probate administration of an estate takes at least six or seven months, often as long as a year or more. Fees for both the personal representative and for the estate's lawyer are set by statute, and often overcompensate for the work actually required. For example, by law the personal representative and the attorney are each entitled to a fee of approximately $26,000 for a probate estate of $1 million. The fee is a percentage of the assets administered, with larger percentages for smaller estates. In addition, probate records are public records, in contrast to other methods of passing wealth at death. Expense, delay, and the public character of records are reasons many wish to avoid probate.

What assets will or will not pass through a probate process? The probate process involves only those assets owned by the decedent alone, not those owned jointly, and not those that have valid non-probate beneficiary designations. Note that "tenancy in common" refers to separate ownership of a share of an asset such as stock or real estate. That kind **is** a probate asset as to the fraction owned by the decedent. "Joint tenancy" or "tenancy by the entireties" are kinds of ownership that evaporate at the death of one owner if one or more other owners survive, and assets owned in these ways thus do not pass through a probate estate. Assets owned in a trust will not pass through a probate estate unless the trust document gives this instruction, which is exceedingly rare. Non-probate transfers, with beneficiary designations, are like life insurance: the assets go directly to the beneficiary and not through the decedent's probate estate. One's probate estate consists of everything he or she owned at death, unless it passes by operation of law to someone else because a non-probate beneficiary was designated in some document of ownership, or the ownership expired at death, as in the case of property that was jointly owned with someone who survives.

Small probate estates. If the assets subject to the probate laws and process have a value of less than $40,000, a small estate proceeding, which is usually less expensive and onerous than full administration of an estate, is available.

Possible disruption of plan by incomplete probate avoidance. It often happens that someone employs probate-avoidance techniques in his or her estate planning, but then overlooks something as time goes by. Also, some events beyond a person's control can create the necessity for a probate estate. This scenario sometimes produces both a probate estate and transfers directly to beneficiaries of many other assets by other means. This can defeat a person's intentions, especially if there was an effort to give each of a group of people exactly equal shares. This situation also can create greater complexity in dealing with the decedent's affairs instead of the reduced complexity intended.

What a will does. Wills directly control **only** those assets that pass through a probate estate. Wills sometimes have other roles, such as appointing a guardian or conservator for minor children, but the only assets they control are the ones subject to the probate process. This means that you cannot accomplish division of all your assets according to the terms of your will if you also have joint ownership with someone who survives you or if you have used non-probate beneficiary designations on assets or established trusts with some of your assets. All those other arrangements take precedence over the will; each arrangement controls certain assets, and the will controls only the probate assets. In some circumstances pairing a will that creates a trust for some beneficiaries, such as minors, and nonprobate beneficiary designations that send assets at the owner's death to that "testamentary" trust, thus going around the probate estate, is a sensible way to proceed.

Choosing to have a probate estate still can make sense. In some circumstances, despite what has been said, intentionally choosing to have all (or most of) your assets go through a proceeding in probate court at death and choosing to have a will as your only estate planning document still makes sense. During your lifetime, as a practical matter, it's often easier to keep a will private than it is to keep private a trust or other non-probate arrangements. If you don't want even your kids to know what you have until you're gone, and if you don't care about the costs and delay and public character of probate proceedings after your passing, doing your estate planning in the form of a will may make the most sense. Also, if you have minor or disabled children or want all of your estate planning in a single document to guarantee equal treatment or want to cause a trust

to spring into existence if certain facts persist at your death, doing your estate planning (or most of it) by will rather than creating a trust now or using nonprobate transfers still might make the most sense. In this approach, some of the cost of probate can be avoided by using beneficiary designations in favor of the trust created by your will.

Caution about joint ownership with anyone not your spouse. People often think they should add their adult children or a trusted friend to their bank accounts, homes, stock, etc., to give them access to the assets if they themselves become unable to manage things, or to make bill-paying easy at death. Sometimes the only thought behind this is avoiding probate and lawyers. These are potentially **serious** mistakes. Joint ownership by spouses provides protection from the creditors of either spouse alone, but joint ownership by non-spouses does not provide such protection. Adding your adult child as an owner, for what you and she think is convenience and ease of transition, may have disastrous consequences. If your child incurs a large uninsured liability, goes through a nasty divorce, becomes disabled, or takes bankruptcy, the understanding about this being for your convenience probably will not prevail. What you and your child agree is really yours isn't in the eyes of the law or in the eyes of your child's creditors or angry spouse. If she becomes disabled or bankrupt, someone will even have the legal duty to take some or all of your assets to pay your child's bills. Furthermore, adding a joint owner can amount under gift tax law to making a gift, and the recipient of a gift gets your tax basis rather than the stepped-up tax basis that might be available if you retained the asset exclusively as your own until death.

To the extent that access to assets while you are alive and immediately effective transfers at death without probate court or lawyer involvement are good ideas for you and your children, and they often are, it is far better to address concerns about bill-paying and your own future disability and such with a good Durable Power of Attorney, which grants access while you're alive, without ownership, and combine this with non-probate transfers to avoid probate court involvement with your affairs after death.

Summary of Probate Avoidance Techniques.

Joint ownership with someone who survives means that after your death the other is the sole owner of the entire asset. There is nothing to go through probate, and your will and your other estate planning arrangements do not affect this kind of property. Generally, only spouses should own things jointly.

Trusts are similar in some ways to corporations. They are sort of like fictitious legal entities that you create by signing documents. They do not die when you die. While able to do so, you usually may be the trustee. Trusts, by their trustees, own assets, and when the trustee job is vacant because of death, resignation, or disability, there is a mechanism prescribed by the creator of the trust for filling the vacancy with someone else. The trust typically has provisions about who is to receive the income generated by trust property and who is to have access to the assets while it is in existence, and about when the trust is to terminate and how distribution is to be made of the assets remaining at that time. To the extent that you make arrangements for the trust to own property during your lifetime or to become the owner by non-probate transfers to take effect at your death, such assets do not go through a probate estate, and are not subject to the dispositive terms of your will.

Non-probate transfers are beneficiary designations such as "POD" ("pay on death") or "TOD" ("transfer on death"), and may be used for any kind of property you own, including real estate, tangible personal property, intangible personal property, stocks, bank accounts, motor

vehicles, livestock, etc. Note, however, that passage of real estate at death is controlled by the laws of the state where it is located. Thus, if you own real estate in Missouri or in any of the other states with laws similar to Missouri's non-probate transfers law, this method of passing the real estate will work, but it still will not work for real estate interests located in some states. Documents of ownership with written beneficiary designations are required for all property that you desire to pass this way. It's a bigger hassle now, and requires diligence, but to the extent it succeeds, it is usually virtually no hassle for your named beneficiaries after your death, unless they are inclined to fight with each other.

Note about debts. None of these probate avoidance techniques will allow escape from your debts. Missouri law provides that if a deceased person's debts are not paid and no probate estate is opened, an unpaid creditor can force an estate to be opened, and enough of the property transferred by non-probate means will be brought in to pay the debts. This usually means that those receiving assets by any of the non-probate methods will need to see to it that the debts of the decedent are paid before a creditor forces the opening of an estate. So-called "asset protection trusts" are possible, but generally require irrevocability and giving up management of the assets to others, and a high level of confidence in one's predicting ability about future legislative actions. In my judgment, they are rarely worth the effort and expense.

Planning for Disability

Most of the discussion so far relates to planning for transfer of assets and management of assets at the time of your death and thereafter. Sensible estate planning these days also includes advance planning for management of assets and care decisions during lifetime if you become unable to manage such things. Insurance people say that regardless of your age, in any given year you are more likely to become disabled than you are to die.

History. For centuries the law has identified certain circumstances under which a person is not permitted to take legally effective action. Being a married woman used to be such a circumstance, but no longer is. Being a minor (Missouri law and the laws of most states treat people as minors only until attaining age 18) and being disabled or incapacitated as defined in the statutes are the major areas under current law where people cannot make legally binding decisions about themselves or their property. Any attempt to act under these circumstances can be declared invalid by a court or may be invalid even without a court declaration.

Guardianships and Conservatorships. Just as the law for centuries has disallowed legally effective action by minors and disabled persons, it has for centuries provided ways for other persons to be authorized to take legally effective action for them. Current Missouri law labels as "**guardians**" those appointed by a court to make health care and living arrangements with respect to a minor or incapacitated person. Those appointed by a court to manage the assets of a minor or disabled person are called "**conservators**." Often, if a situation requires that someone else make both personal care decisions and asset management decisions, the same person will be appointed as both the guardian and the conservator. Only a court, not an individual, can appoint someone as guardian or conservator for a minor or incapacitated/disabled person, and those who have been appointed by a court to these positions are subject to elaborate rules about how to fulfill their duties and how they must report to the court about how they have done so. The court in question is the local probate court for the county of residence of the minor or incapacitated/disabled person. For minors, but not for adults, the law provides that the minor's parents are his or her "natural

guardians" and thus are legally empowered to make health care and living arrangement decisions, etc. for the minor without any formal court appointment. No such power exists for management of assets belonging to a minor; they can be managed only by a court-appointed conservator (with some exceptions).

Avoiding probate during lifetime. Just as it's a good idea under many circumstances to avoid having the probate court be involved in your affairs after death, the same is true while you're still alive. All the same reasons apply: it often costs too much (much of the cost is attorney's fees); it takes up more time than is really necessary to get the job done; and it makes many things a matter of public record that many people would rather keep private. Missouri by its current laws allows, even facilitates, different ways of handling these issues and circumstances without requiring involvement of the probate courts through guardianships and conservatorships. The following discussion will cover the most commonly used but not all of the alternatives.

Trusts were among the early methods developed by attorneys for providing an alternative to both conservatorships for living people and probate court supervised estates for deceased people. Like conservatorships, they deal only with asset management and financial matters. It is possible for a trust to avoid the necessity for creating a conservatorship for a minor or a disabled person. The trustee, not the minor or disabled person, owns the assets and does as the trust document and trust law require, possibly paying all the living expenses of the minor/disabled beneficiary. Because the beneficiary doesn't own the assets, no conservator is required. Trustees are not empowered to make decisions about placement or health care, although they often are in a position to influence such decisions. If you are establishing a trust for other reasons or your circumstances are such that you wish to have a trustee manage all of your assets for you, the trust can go a long way toward establishing a mechanism for handling your affairs that will minimize the chance of needing probate court involvement if you become disabled.

Trusts also can be created by provisions in your estate planning documents such as wills to facilitate management of assets you wish to leave for the benefit of someone who is a minor or disabled or simply because you don't trust the beneficiary not to waste the assets. If you left assets directly to someone who is a minor or is disabled, that alone would create the need for a conservator to be appointed for that person. Leaving things in trust for someone rather than outright to him or her thus could avoid expense, delay, and public character problems for such a bequest, and the terms of the trust could provide for termination of the trust and payment to the beneficiary (or someone else) of all trust assets upon the happening of any event you choose, such as the beneficiary attaining a certain age or dying before the trust is exhausted. If carefully drafted, certain trusts can benefit disabled persons without disrupting government benefits such as Medicaid (called "MoHealthNet" in Missouri).

Custodianships are the rough equivalent of trusts, but all the terms are set by state statutes. They are especially useful for relatively small amounts someone wishes to give to a minor or disabled person. The gift is actually made to an adult as custodian for the beneficiary. The custodian manages the property but for most purposes the minor or disabled person for whom it is held is considered the owner. If the beneficiary is a minor, when he or she turns 21, the custodian must turn over the property and fully account for its management.

Durable Powers of Attorney. The word "attorney" simply means "agent." I am an "attorney at law" and thus authorized by clients to speak on their behalf, as their agent, in the legal arena, the courts and elsewhere. The legal system requires education, training, and licensure to act

in this capacity. You may, however, choose anyone you wish, without regard to training and licensure, to do many other things on your behalf as your "attorney" or agent. Someone who is functioning as your designated agent in a context outside what is defined as the practice of law is called your "attorney in fact." Checking boxes and filling in names so that you give someone else authority to sign checks on your bank account without making that person an owner of the account is a common way of designating someone as your attorney in fact or agent with respect to that one asset, even though the signature card form where you do so may not use either term. For centuries, the law provided that each attorney in fact designation or "power of attorney" expired when the person who signed it either became disabled or died. Just in the last 35 years, this has changed. Now, if a power of attorney document specifies that it is "durable" and does so in the proper way under Missouri law, the disability of the signer does not affect the validity of the appointment of the agent. It is still true that death of the signer causes almost all of the authority under a power of attorney, even a "durable" one, to expire. Among the very few powers that may be exercised after the person dies is donating body parts for transplantation and making funeral and burial arrangements.

Powers of attorney, that is appointments of people as your agents, may be made for personal matters, such as health care, making living arrangements, etc., and they may also be made for property management, bill paying, etc. A single simple document may appoint someone to have all powers it is possible to give another person. Doing so makes it unnecessary to go around and fill out lots of different signature cards, "health care directives," or other forms. If it's done right under Missouri law, all your agent needs to do if he or she needs to sign checks on your account, sell your real estate, sue somebody on your behalf, make health care or placement decisions for you, or do anything else regarding your affairs, is produce an original of the simple document giving him or her such powers, and without your agent's name on the signature card or other asset ownership or other records, the bank or hospital or whomever your agent is dealing with is required to allow your chosen agent to act for you.

Powers of attorney may be created only by adult, non-disabled persons. Their effect often is to make appointment of either a guardian or a conservator unnecessary.

Legal limitations on powers of attorney. Durable General Powers of Attorney are extremely powerful documents. For this reason, you should not give such powers to anyone unless you have near-total trust in him or her. Missouri law allows someone named in a broad "general" durable power of attorney to do everything the person who signed it could do, with certain limitations. No agent may ever make or revoke a will for another. No agent may ever make or revoke a "living will" for another. No agent may ever legally do something that is not in the best interests of the person who gave the power. No agent may ever legally do something contrary to the explicit instructions of the person who gave the power (if he or she was competent when the instructions were given). Unless the power of attorney document itself lists them, the agent does not get a certain list of powers that the legislature thought were especially sensitive. That list includes such things as making or revoking gifts of the person's property, creating trusts with the person's property, amending trusts the person had created, changing beneficiaries on life insurance or other kinds of property, adding or deleting joint owners for property, making gifts of anatomical parts, authorizing autopsies, appointing guardians or conservators, etc. My general thinking about this is that if you have the near-total trust you should have in persons to whom you are giving such powers, you should include all or nearly all of these powers, make the document immediately

effective, and distribute copies to the persons you name so that if a situation arises in which it needs to be used, that use can be accomplished without fuss or delay.

Planning for the possible need for nursing home care. Beyond the planning represented by granting a durable power of attorney, this is a complex topic, with an easily stated bottom-line conclusion. If you worry a lot about paying for nursing home care while still preserving some assets for heirs and can afford long-term care insurance, you might want to buy such insurance, but otherwise you probably shouldn't shape your decision-making about titling of property or its disposition at death based upon this worry. If the worry is great, it probably would be helpful to acquaint yourself with the Midwest Special Needs Trust (also called the Missouri Family Trust), which was created by Missouri statutes to hold assets to benefit disabled persons without making the assets held countable as assets available to pay for the disabled person's basic needs such as food, clothing, and shelter, and thus allow the existence of this arrangement to avoid disqualifying the disabled person from public benefits. If you'd like a full discussion of this topic, I can provide it.

Summary. Trusts, custodianships, and Durable Powers of Attorney all were evolutionary developments within the law of Missouri and other states with one of their purposes being to avoid the necessity for probate court involvement in most situations, and allowing citizens to make their own selections and rules about how their affairs and sometimes the affairs of others are to be managed. Generally, situations that involve a trust, a custodianship, or a Durable Power of Attorney need not even come to the attention of a court unless a dispute arises over something such as mishandling the affected assets or mistreatment of the affected person.

A Simple Starting Point

A simple estate plan for a Missouri resident designed to use the above concepts might consist of a will for disposition of any probate assets at death and a broad durable power of attorney authorizing someone else to deal with everything during your lifetime in the event you can't. You also may want to take the additional step of avoiding probate at death, and could do so using non-probate beneficiary designations for all your property, to take effect at death. If your circumstances make such a plan appropriate, even the minor hassles of you, your spouse, or your heirs living with a trust are avoided, and the hassles and expense of probate court involvement are avoided, both during your lifetime and after your death. Even with a plan in place to avoid probate, it is wise to have a will as a backup, in case at your death there turn out to be some assets subject to the probate process.

Among the common reasons for deviating from such a simple plan are a realistic worry about estate taxes, having a close family member who is disabled, having children who are still minors, having a spendthrift child or other person you want to look after, not having anyone you trust completely, having an unusually strong desire for privacy, owning real estate in states other than Missouri, a desire to have a professional trustee such as a bank manage your assets, or having a prenuptial agreement.

Let me know how I may help you achieve your version of simplicity, peace of mind, and family harmony, or whatever your other estate planning goals may be.

William Jay Powell