

WHAT WOULD YOU DO IF YOUR SPOUSE DIED

**ESTATE PLANNING
OFTEN OVERLOOKED POINTS**

UACPA UPDATE

BY

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I. Introduction.

The typical estate plan consists of wills for each spouse, a revocable, living family trust to avoid probate and fully utilize each spouse's unified credit, durable powers of attorney to avoid conservatorship proceedings in the event of an incapacitating event, and living wills. In addition, efforts are taken to "fund" the family trust by transferring assets to it.

Too often, the estate planning discussion and service provided go no further. As a consequence, spouses are too often left wondering what to do when a loved-one passes away.

II. Additional Helpful Materials/Organizational Aids.

A Binder containing copies of all important papers, documents and instructions is of immeasurable worth to a loved one of a deceased person. Consider including the following:

A. Personal Data.

1. Names of both spouses, children, parents, brothers, sisters.
2. List all addresses, phone numbers, social security numbers.
3. List dates and places of birth, marriage, and, if appropriate, death.
4. Consider attaching copies of:
 - i. Birth Certificates.
 - ii. Marriage License.
 - iii. Divorce Papers (previous marriage[s]).
 - iv. Military Papers.
 - v. Vital Papers of Personal Interest.

B. Final Instructions.

1. Letter to Personal Representative. The client should write a letter to his or her personal representative setting forth all of the information he or she might need. This should include a reference to the client's personal property list attached to his or her will, the location of any safe combinations and safe deposit box keys and instructions about things the client wishes to be done after his or her death. It is a good practice to review this letter annually.

The following is a checklist for such a letter. The letter is not in any way a will substitute and the client should prepare any will only with the advice of legal counsel. In a personal way, the letter can describe those items that to the client are most important.

Checklist for a Letter to the Personal Representative:

- * Legal advice sought.
- * Describe general concerns including the propriety of using the letter to help your guardian in case of incompetency.
- * Describe relationship between will and trust documents and the letter.
- * Describe location of originals of important papers and valuables.
 - a. Originals and copies of wills and trust agreements.
 - b. Bank account books, certificates of deposit and securities.
 - c. Life, health and disability policies.
 - d. Business arrangements such as partnership agreements, buy-sell agreements, stock subscriptions, employment agreements.
 - e. Powers of attorney (general, limited and “durable” under Uniform Probate Code).
 - f. Living Will.
 - g. Storage of jewelry and other valuables.
 - h. Location of combination to safe and safe deposit box keys.
- * Give funeral and burial instructions (include information on ownership of cemetery plot).
- * Indicate your wishes concerning the employment (by the estate and

your surviving family) of your

Attorneys	Investment Advisers
Accountants	Insurance Advisors
Bankers	Tax Advisors

* Give advice concerning use of bequests and heirs.

* Give advice concerning investment philosophy to be followed by Personal Representative or surviving spouse. This section should also be used for advice regarding a family business, if any.

* Give specific wishes regarding distribution of personal property which will not be probated.

* Give information which may be useful concerning tax questions which may arise. (Consult legal counsel.) This may include references to ownership of certain assets, division of community and separate tenancy property, intent to make or share in gifts, taxes, domicile, etc.

* Describe reason for choice of guardian of minors who survive you and give advice to that guardian.

* If letter is to be for your guardian (if you become incompetent) as well as Personal Representative, refer to "Living Will" if you have decided to curtail use of heroic means to prolong life. This section may also be used to indicate wishes concerning donation of organs.

* If letter is for Guardian, and if you are someday found to be incompetent, give specific wishes concerning your person as well as your estate.

2. Also consider Post Mortem Checklist/Procedures at Death If you are unsure what should be done, emphasize the importance of contacting legal advisor, who should have a comprehensive checklist for procedures at death, post mortem elections and planning, and coordination of efforts with all other professional advisors.
3. Last Illness Wishes (Living Will).
4. Organ Donation Gifts.

5. Burial and Funeral Instructions.

C. List of Advisors.

1. See attached Advisors List.
2. Consider adding names and phone numbers of plumber, electrician, and other professionals the client has used in the past for all home and personal needs.

D. Financial Statements.

See attached Financial Statement.

Provide the surviving spouse with an up to date snap-shot picture of the family's assets and liabilities. Do not forget a list of all of credit cards.

Include copies of all gifts reported on Form 709.

E. Financial Plan.

Outline of financial goals and planned steps to get there.
Many qualified financial planners and insurance planners have access to excellent planning tools.

F. Detailed Asset Information and Documents (for each spouse's separate assets, and jointly held assets).

1. Savings and Investment Documents. Include copies of:
 - i. Checking Accounts.
 - ii. Savings Accounts.
 - iii. Company and Credit Union Savings.
 - iv. Money Market Funds.
 - v. Certificates of Deposit.
 - vi. Treasury Bills/Notes.
 - vii. Stocks.
 - viii. Bonds (including government savings bonds).
 - ix. Mutual Funds.
 - x. Annuities.
 - xi. Notes Due.
 - xii. Other Obligations Due (note, if no one knows the client is owed money, then no one will collect, at the client's family's ultimate

- expense).
- xiii. Any and all Other Contractual or Related Assets/Benefits/Performance Due to the Client.

2. Retirement Programs. Include copies of:

- i. IRAs.
- ii. Keogh Plan and Account Information.
- iii. SEP.
- iv. Pension Plan.
- v. Profit Sharing Plan.
- vi. Tax Sheltered Annuities.
- vii 401(k) Plans.

Also include thoughts and instructions on:

- i. Beneficiary Designations.
- ii. Payout Elections (Lump Sum, Annuities, JSA's).
- iii. Roll-Overs.
- iv. Age 70 1/2 Payout Elections.
- v. Person to contact to collect account balance at death.
- v. Social Security Elections (Instructions on how to apply, better to start at age 62 or 65).

3. Real Estate Documents. Include copies of:

- i. Deeds and Titles for:
 - a. Home.
 - b. Other Real Estate (second homes, investment properties, timeshare interests, etc.).
- ii. Uniform Real Estate Contracts and/or Trust Deeds and Notes on Real Estate Sold "On Contract." In this regard, a current amortization schedule and payment history is tremendously helpful.
- ii. Mortgages:
 - a. First.
 - b. Second.

4. Insurance Policies. Include copies of face page of each life insurance, disability income, health and accident and credit insurance policy. Also, as to each, include name and phone number of the insurance agent or other person to contact to walk the surviving spouse through the claims procedure (or COBRA continuation of benefits procedure).

5. Business Agreements and Documents. Include copies of:
 - i. Corporate stock certificates.
 - ii. Partnership/LLC Agreements.
 - iii. Buy-Sell Agreement.
 - iv. Stock Redemption Agreement.
 - v. Other Agreements.
 - vi. Business Paid Life and Disability Insurance.
 - vii. Deferred Compensation Plans.
 - viii. Employment Agreements.
 - ix. Summary List of all Employer Provided Perks and Procedures to Maintain Them (e.g., importance of COBRA elections for health insurance continuation of coverage). Provide as much information as possible as to what the perk is, who to contact about it, and instructions as to exactly what the surviving spouse needs to do to obtain the benefit.
 - x. Lists of Personally Owned Property located at or used in the Business.
 - xi. Suggestions regarding whether business can or should be sold or continued, and who to contact to help the surviving spouse do it. Suggestions on how the surviving spouse should deal with surviving business partners. If the business should be sold, make sure the non-business spouse knows the business spouse's views as to what it should be sold for, and why.

6. Personal Assets.
 - i. Car, boat, RV titles.
 - ii. Other Important Personal Property Related Papers (e.g., authenticity certificates on artwork and collectibles, appraisals on jewelry).
 - iii. Home Inventory (good idea for fire/theft insurance claims).

7. All Debts and Obligations. Include copies of:
 - i. Mortgages and Trust Deed Notes (other than in item 3ii above).
 - ii. Other Notes.
 - iii. Department Store and Similar Credit or Charge Accounts.
 - iv. Credit Card Statements.
 - v. Magazine and Newspaper Subscriptions.
 - vi. Other debts and obligations (including those not documented).
 - vii. All Credit Insurance Information (so that the surviving spouse can apply for it and pay off the debt in the event of a spouse's death).

G. Document Locator.

1. See attached Document Locator.
2. Make sure each spouse/PR knows the location of all safe deposit boxes and as well as the location of all keys thereto.
3. If the client has a safe, each spouse/PR will need to know what the combination is or where to find the combination.

H. Estate Plan Documents. Include Copies of:

1. Wills and all Codicils thereto.
2. Memorandum/Personal Property Disposition.
3. Trust and all Amendments thereto.
 - i. Schedule A (assets contributed to the Trust) up to date and attached.
 - ii. With A/B Trusts, some direction as to how to allocate assets between Trusts A and B (the marital deduction and credit shelter trusts).
 - iii. Trust Abstract.
4. Insurance Trust.
 - i. Schedule A (assets contributed to the Trust) up to date and attached.
 - ii. Abstract.
 - iii. Copy of face pages of all policies held by the trust's trustee.
 - iv. Copies of all trust contributions and associated crummy notices sent by the trustee to the trust's beneficiaries in compliance with the crummy power provisions.
5. Durable Powers of Attorney.
6. Living Wills and Gifts of Vital Organs.
7. Any Revocation Documents and Detail.