

The Law Office of
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Dear SBA Member:

Thank you for your inquiry to our firm regarding an Estate Plan. Everyone should have an Estate Plan in order to prepare for life's unplanned contingencies. As a member of the Sergeants Benevolent Association, one of your benefits allows you to have an Estate Plan prepared for you.

Enclosed is an Estate Planning Informational Packet that you should find helpful. The packet explains the documents included in a typical Estate Plan which are a Will, a Durable Power of Attorney, a Health Care Proxy and a Living Will.

After you discuss the issues with your loved ones, please complete the last page of the packet and forward it to our office. We will contact you in order to begin the process of drafting your plan.

Thank you for your consideration. If you have any questions feel free to call, or e-mail us at attorney@mcconnonlaw.com.

Very Truly Yours,

Joseph McConnon

Joseph McConnon

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UNDERSTANDING YOUR ESTATE PLAN

THE WILL

The most important document in your estate plan is the will. A will states your preference as to the disposition of your estate. Even if you take measures to avoid probate (the process of adjudicating a will), you still need a will for the remaining assets.

Non-probate assets such as joint accounts, life insurance, real estate held jointly, Deferred Compensation and pension benefits pass outside of probate and are not governed by the will. However, this property is still in the taxable estate and will be subject to tax. There is no tax advantage to circumventing a will through probate-avoidance measures. You may have heard about the benefits of placing your assets in a revocable (living) trust. A will is preferable to a revocable trust for the majority of New York residents as probate fees are reasonable and the process is not unduly cumbersome, while fees to establish revocable trusts can be costly.

With a will, you have control over how and to whom your property shall be distributed after your death. There is one exception; you cannot completely disinherit a spouse.

A will is also important not just to convey property as you desire, but for other matters. For example, you can indicate your preference for the guardianship of minor children. A will can also incorporate various tax planning techniques.

In preparing your will you have to make several decisions: Who do I want to leave my property to (*the Beneficiary*)? Who will be my administrator for the estate (*the Executor*)? If my spouse is no longer alive who will be responsible for raising my children (*the Guardian*)? And who will manage the assets for the benefit of my children (*the Trustee*)?

Executor

You need to name an executor to collect, administer and distribute the estate. The Executor may be your spouse, another relative, a friend, a lawyer, a trust company or a bank. The Executor utilizes the services of a lawyer to probate the will.

You should also name a successor executor, in case the first named executor is no longer able to act.

Specific Bequests

You may have particular items or property that you want to leave to a specific individual or organization. Personal items such as jewelry may no longer be in your possession at death. Therefore, we frequently advise that you should inform your Executor through a memorandum your preferences for such personal items. However, you may devise these items specifically in your will.

You may also wish to leave a specific sum of cash to a specific individual or organization. The remainder of estate should be divided among individuals or groups of individuals by percentage.

Minor Children

Guardian

If your spouse predeceases you, or in case of simultaneous death, you need to name the person who will protect the person and property of your minor children.

It is not a good idea to leave a bequest to minor children outright. Two ways to avoid an outright bequest to minor children are:

- 1) Allow the Executor broad discretion to use the funds for the child's maintenance, support, health, and education until the minor reaches age twenty-one when they will take their share outright. This method saves the costs associated with setting up and administering an Express Trust, which may be significant.
- 2) Set up an Express Trust
A Trustee is designated and may use the net income and principal of the Trust only for maintenance, support, health, and education to benefit the children until the age (or ages) you specify the child can take the funds outright.

You know your family situation best. The maintenance of a Trust may be cumbersome and costly, but allows the Trust funds to be distributed as per your wishes. Besides cost, one major factor to consider is- how much money would you consider to be too much for a twenty-one to responsibly manage?

Trustee

The Trustee will handle the financial affairs of the Trust. The Trustee named may be the same individual as the Guardian or different relative or friend. You may also name an institutional Trustee such as a trust company or a bank. It is generally a good idea to name someone who is responsible and good at handling finances.

Types of Trusts

There are two types of trusts you can set up for the benefit of your children a *Separate Children's Trust* or a *Single Pot Trust*.

The Separate Children Trust

- Each child gets exact share
- Trustee distributes for maintenance, support, health, and education.
- Age 21 child receives income (interest, dividends etc.) from Trust.
- Age 25 then ½ the principal is distributed.
- Age 30 then remaining principal is distributed.*

The Single Pot Trust

The Trustee has the discretion to distribute net income or principal among the children for maintenance, support, health, and education until youngest child reaches age 25 then the remaining principal is distributed.*

This trust gives the Trustee more flexibility to evaluate the differing medical or education needs of your children which may arise.

* The ages and number of distributions given are for illustrative purposes. You may select different ages or change the number of direct distributions-usually no more than three.

POWER OF ATTORNEY

A **Durable Power of Attorney** enables an individual, called the "principal," to choose a trusted agent to handle the principal's financial affairs when the principal is incapacitated and is unable to manage his or her own financial affairs. It is called "durable" because it continues during the principal's mental or physical incapacity. The alternative to managing financial affairs when incapacitated is a time-consuming and costly guardianship proceeding. A non-durable power of attorney such as a "springing power" is not recommended for estate planning purposes.

The Durable Power-of-Attorney will determine who has the legal authority to act as your agent should the time ever come that you cannot make decisions for yourself. If you become incapacitated (i.e. through stroke, coma, accident), the person you have designated, not a court, will take over your affairs and act within the guidelines and restrictions you have already established. The agent can pay bills, deposit checks, handle taxes, and manage your assets in a falling stock market. In short, everything that you could otherwise do for yourself, but only if your agent is given that specific authority.

The Durable Power-of-Attorney is useful even for married couples who hold property jointly. If one spouse becomes incapacitated, where one spouse cannot act alone, the other acting as the agent, can promptly sell, transfer or refinance property without a court order.

Your agent may be your spouse, a family member or a friend. It is generally a good idea to name someone who is responsible and good at handling finances. However, trustworthiness is most important. The agent can always seek financial advice from an accountant or a financial adviser. You may also name a successor agent if your primary agent is unable to act, or designate co-agents where both must agree in order to act.

Below are the powers as enumerated in New York's Statutory Short Form Durable Power of Attorney:

- (A) real estate transactions;
- (B) chattel and goods transactions
- (C) bond, share, and commodity transactions;
- (D) banking transactions;
- (E) business operating transactions;
- (F) insurance transactions;
- (G) estate transactions;
- (H) claims and litigation;
- (I) personal and family maintenance;
- (J) benefits from governmental programs or civil or military service;
- (K) health care billing and payment matters; records, reports, and statements;
- (L) retirement benefit transactions;
- (M) tax matters;
- (N) all other matters;
- (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
- (P) EACH of the matters identified by the

following letters A,B,C,D,E,F,G,H,I,J,K,L,M,N,O

You need not initial the other lines if you initial line (P).

Between spouses, generally paragraph (P) is selected granting the full authority of the statute. You may also include special provisions in the statutory form, placing limitations on the enumerated powers or expanding upon them.

The best plan is one where you appoint a *trusted agent*, let your wishes be known to that person, and grant him/her the flexibility of action needed to act on your behalf.

HEALTH CARE PROXY and LIVING WILL

The New York State *Health Care Proxy Law* allows you to appoint someone you trust to decide about medical treatment if you lose the ability to decide for yourself. You can appoint someone by signing a form called a *Health Care Proxy*. If you have not appointed a proxy then, under New York State law, *there is no one who becomes the proxy by default*.

Appointing a proxy lets you control your medical treatment by giving the person you select, your "health care agent," as little or as much authority as you want. You can allow your health care agent to make decisions about all aspects of your health care or only about certain treatment. You may also give your agent instructions that he or she must follow. Your agent can then make sure that health care professionals follow your wishes. Hospitals, doctors and other health care providers must follow your agent's decisions as if they were your own.

You should also name a successor agent, in case the first named agent is no longer able to act. Appointing co-agents, where two people must act together, is not recommended for this document. The law gives you power to impose reasonable limitations and guidelines on the actions that health care agent may take.

In order for your agent to make health care decisions for you about matters involving life-sustaining treatment, such as resuscitation, the withholding of artificial ventilation, nutrition and hydration your agent must establish that the agent knows *your* wishes. The best way to establish this is to discuss your wishes with your agent and also to state those directives in a *Living Will*.

A Living Will can also be used to show your desire to make an anatomical gift (organ donation) or indicate limitations on such a gift.

Directives in a Living Will must be very specific, therefore, they are not flexible to changing conditions. Health Care Proxies are specifically authorized by New York State Law while a Living Will is not. By executing both a Health Care Proxy and a Living Will you would enable the person who you give the authority to make health care decisions, the ability to demonstrate your desires to the health care providers.

**You cannot predict the future,
but by stating your preferences in well-designed documents,
you *can* plan for contingencies.**

Prepared by:
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**REQUEST FOR ESTATE PLAN INTERVIEW FAX TO: (212) 343-5690 OR
EMAIL TO attorney@mccannonlaw.com WHEN COMPLETE**

Dear SBA Member:

After you have read the attached Estate Plan Informational Packet, and discussed the issues with your loved ones, please fill out the form below and fax or email this page only to *The Law Office of Joseph McConnon & Associates P.C.* at (212) 343-5690 or attorney@mccannonlaw.com. We will then contact you to get started on designing an Estate Plan for you and your spouse. Feel free to call us with any questions you may have.

SBA Member's Name:		Tax No.:	
Spouse's Name:			
Home Address:			
Home Phone:	Cell Phone no. Member:		
E-mail Address:	Cell Phone no. Spouse:		
Children's Names:	Birthdates:	Children's Names:	Birthdates:
1.		5.	
2.		6.	
3.		7.	
4.		8.	

Please provide the full name, address, and phone number for each person below, if applicable. For married couples, the **Primary Executor, Health Proxy and Power of Attorney** is typically the other spouse.

Role	Full Name	Address	Phone Number
Primary Executor(s):			
Successor Executor(s):			
Primary Health Care Proxy:			
Successor Health Care Proxy:			
Primary Power of Attorney(s):			
Successor Power of Attorney(s): <i>(not typically recommended)</i>			

Below is usually only applicable for those with minor children:

Primary Trustee(s):			
Successor Trustee(s):			
Primary Guardian(s):			
Successor Guardian(s):			