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ESTATE PLANNING
Wills, Trusts and Power of Attorney

LOBERG LAW OFFICE

359 W. Main Street
Ellsworth, WI 54011
715-273-5072

www.loberglawoffice.com

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Estate planning is the process of determining how to manage your property and assets during your lifetime and following death or incapacity. Estate planning generally includes four primary elements or decisions:

1. How and by whom your personal care will be managed and how healthcare decisions will be made during your lifetime if you become unable to care for yourself.
2. How and by whom your assets will be managed during your lifetime if you become unable to manage them yourself.
3. How, when, and under what circumstances you distribute your assets during your lifetime.
4. How and to whom your assets shall be distributed following your death.

Estate planning provides your children, spouse and other loved ones financial protection. It can address (and possibly eliminate) estate tax issues.

WILLS

A Will permits an individual to dictate the management and distribution of his or her estate following death. It is often only one part of the planning process and used to complement other planning instruments. Specifically, a Will assures the deceased (referred to as "testator") that his or her spouse will receive property that might otherwise pass to other family members; allows the testator to appoint guardians for minor children or to appoint a trustee for the benefit of the children (even adult children); divides and distributes real and personal property; and designates a personal representative. A personal representative is the individual designated in a Will to carry out the testator's wishes.

TRUSTS

In addition to, as part of, or as an alternative to a Will, an estate planner might recommend creating a trust. A trust is an arrangement whereby a trustee, for the benefit of the beneficiary, manages real and/or personal property. A person who creates a trust is a trustor. The trustee holds legal title to the trust property and is required to hold the property for the beneficiaries specified by the trustor. There are several types of trusts including: lifetime trusts, revocable and irrevocable trusts, a trust created by a Will (testamentary trusts), and life insurance trusts. Advantages of creating trusts include planning for incapacity or guardianship, certain tax benefits and avoidance of probate. Probate is the legal process of settling the estate of a deceased person. Using a Trust to avoid probate in a complicated estate is advantageous because of the expenses involved. It also assures privacy as probate records are open to the public.

POWER OF ATTORNEY

A power of attorney is an authorization to act on someone's behalf. It allows one to establish directives regarding health, finances, and assets before incapacity. Planning for incapacity and naming an attorney-in-fact diminishes the potential conflict between family members and friends if you become unable to care for yourself. There are two primary forms: healthcare power-of-attorney and financial power-of-attorney. The financial power of attorney can be durable or limited. A durable financial power-of-attorney gives the person you designate broad powers to handle your property during your lifetime. A limited power-of-attorney restricts the authority of the agent to specific situations, limited time periods or type of legal actions. The powers granted to the agent will remain in effect even if you become disabled or incompetent. The power of attorney can grant the agent the power to gift assets, a useful tool if the person becomes incompetent and further estate planning is necessary.

A healthcare power-of-attorney allows you to appoint someone to make healthcare decisions for you if you become incapacitated.

TRANSFER-ON-DEATH DEED

A unique mechanism available in Wisconsin to transfer real estate is the Transfer-on-Death deed. The owner of real estate conveys title to beneficiaries (usually children). The transfer is not effective, however, until death. Until death the owner can still sell or mortgage the property or cancel the Transfer-on-Death deed.



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