

10 COMMON QUESTIONS REGARDING ESTATE PLANNING



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ATTORNEY AT LAW

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10 Common Questions Regarding Estate Planning

- 1. *What is Estate Planning and what does it cost?*** An estate plan involves several documents and tools, including a will, possibly a trust, durable power of attorney, health care power of attorney and other documents which are designed to help you manage your assets during your lifetime and distribute them upon your death. Your estate plan is determined after thorough examination and consideration of your assets, liabilities, net worth and tax implications as well as your desires for distribution and any issues unique to your family. The cost of an average estate plan varies greatly and depends on what your estate plan needs to include. Most people need more than just a Will. After an initial consultation and a determination of your specific needs an estimate can be given. Payment arrangements are available.
- 2. *What is a Will and why should I have one?*** A Will is a document that provides direction to Probate Court upon your death as to how to distribute your assets, who should be in charge, etc. A Will **DOES NOT** avoid Probate. Virtually everyone should have one to ensure that their assets and estate are being handled according to their wishes. Without a will, distribution is according to the law of intestacy, which may not be what you expect, especially in situations of no children or children from multiple marriages, etc.
- 3. *What is a Trust?*** A Trust is a legal agreement where property is held by one party for the benefit of a third party. There are many different types which serve many purposes. One of the main advantages of a trust is avoiding the need to probate an estate. In the most common form of trust, the Settlor/Creator can be the initial trustee and remain in full control of their property and use it for their benefit during their lifetime. Upon their death, a successor trustee can transfer and distribute the trust property according to the terms of a trust.
- 4. *Why can't I just own property jointly with my adult children?*** There are many risks associated with owning property jointly with your children or some other individual for the purpose of passing your property after your death. Some forms of joint ownership can't be undone without the consent of the other person. The joint owner's interest may be sold or transferred without the consent of the other owner. The property could be subject to the creditors or a bankruptcy action of the joint owner. Joint ownership, if not done properly, can still result in a need for probate. It is not usually recommended and is often referred to as "poor man's estate planning."
- 5. *What if I am sick/incapacitated and can't take care of my affairs?*** It is recommended that you have a Durable Power of Attorney. This will allow a person you designate to act on your behalf regarding your assets, finances and other legal matters. It is only effective while you are alive and can be limited to when you are incapacitated.
- 6. *What is a Health Care Power of Attorney?*** It is a form of advanced medical directive that allows someone you designate to make medical decisions, including end of life decisions, when you are unable to participate in your own medical care and treatment. Without a Health Care Power of Attorney or other form of advance directive, no one else can make decisions for you. It is sometimes referred to as a "Living Will", which is a more limited form of advance directive that is not specifically recognized in Michigan. A Health Care Power of Attorney is also different from a Do Not Resuscitate Order.
- 7. *What happens to my minor children if my spouse and I die?*** A guardian will have to be appointed to care for the children and a conservator may need to be appointed for any assets they may have or inherit. A Will allows you to designate who you would like as the guardian and/or conservator and will usually be followed by the Court and can avoid family arguments.
- 8. *There are lots of do-it-yourself forms available on line and which are cheaper than an attorney, why shouldn't I just use those?*** When you consult with an Attorney for estate planning, you are getting more than just forms. You are getting a great deal of legal advice based on your individual situation and an assurance that your wishes

will be enforced and your forms are valid. 70% of people that complete DIY forms do so incorrectly, which may make them unenforceable or have unintended results. Most people don't fully understand the consequences of the decisions they are making. Also DIY forms are only for the most basic and simple situations.

9. *My spouse and I are going on a trip/out of town (or my child is traveling out of town without us). What kind of arrangements should we make for our minor children?* Beyond finding someone to watch them, you should provide that person with the health history and insurance information and the legal authority to authorize medical care in your absence in the event of an emergency. Relatives, siblings, even grandparents are not able to authorize treatment without written consent. Other than in life threatening situations, medical providers would have to wait for your authorization. I have a simple form you can complete for this purpose.

10. *I/We already have estate planning documents. How often do I need to update them?* Just like you go to the dentist for regular cleanings or the doctor for an annual physical, you should have your estate planning reviewed on a regular basis. Laws change and your individual situation may change. I recommend a review every 3-5 years, or sooner if you have a life changing event (birth, death, marriage, divorce, etc.) or significant change in assets. Your plan may not need any changes, but should be reviewed to be certain.

- Approximately 60% of people die without a will or estate plan.
- One of the main reasons people don't have estate planning is procrastination.
- Approximately 70% of "do-it-yourself" wills and estate plans are done incorrectly.
- The average probate estate takes 9-12 months to complete.
- The average probate estate costs \$2,000-\$4,000, or more.

About Attorney Tallman **Your "Hometown" Attorney**

Attorney Lori Tallman has been practicing law for 29 years and is a graduate of the University of Michigan Flint and Cooley Law School – cum laude. She worked for two other area law firms before opening her own firm in 1999. Before attending law school, she earned an Associate Degree from Mott Community College as a Paralegal and worked for a preeminent general practice attorney in Genesee County. She also taught part-time in the Paralegal program at Baker College of Auburn Hills for fifteen years.

Attorney Tallman is a member of the Genesee County Bar Association and the State Bar of Michigan. She has served as a Case Evaluator for 24 years and has been involved with the Teen Jury Program as an Attorney Referee for the past eight years.

Attorney Tallman is very involved in the community, including serving as Vice President of the Davison Educational Foundation, Past Chair of the Davison Community Fund, past member of the Board of Trustees for the Community Foundation of Greater Flint for ten years. She is a member of the Davison Area Chamber of Commerce and has been involved in the Miss Davison Scholarship Pageant in various capacities including Director, for the past 38 years.

Attorney Tallman (formerly Lori Button) was born and raised in Davison and graduated from Davison High School, as did her children, parents and grandparents. Her parents both owned businesses in the community for several years. She is very proud to have a law firm located in her hometown and be able to provide quality and personalized legal services to her community, Genesee County and surrounding counties.

She and her husband Terry Kendrick reside in Davison and together they have three children.

This document contains general information and does not constitute legal advice.
You should consult an attorney for legal advice pertaining to your individual situation.