INTRODUCTION

Thank you for signing up for our free estate planning worksheet and guide. We hope this will be helpful to you in thinking about what kind of plan you want to put in place to protect your loved ones and your legacy. Please feel free to call us at (781)784-2322 for a free initial consultation,

PART ONE: DO I NEED AN ESTATE PLAN?

The simple answer is no. If you die without a will, Massachusetts law will do your estate planning for you and will govern to whom your assets will be distributed and how much each person will receive. In most cases your assets will be distributed to your spouse and/or children. This process, however, may not reflect what you want, and will require your heirs to go through the time consuming and sometimes costly process of probating your estate. The only way to ensure that your assets are given to loved ones of your choosing, and not depleted on avoidable court fees, bonds, and legal fees, is with an estate plan. If you are alive, own anything, and have people in your life whom you would like to benefit from your assets after you die, you really should have an estate plan, even if it is not a complicated one. The questions below are designed to help you understand what exactly you need.

Your Assets

Value of Primary Residence $_____
(estimated market value less any amounts owed on property)

Value of Other Real Property $_____
(estimated market value less any amounts owed on property)

Value of Other IRAs, 401(k) $_____
or other retirement savings

Life Insurance Benefit $_____
(the amount payable to your designated beneficiaries under any insurance policies on your life)

Amount in Savings Account(s) or CD $_____

Amount in brokerage accounts $_____

Amount in mutual funds $_____

Anticipated Future Inheritance $_____
(approximate value of assets you anticipate inheriting from others)

Other assets: $_____

(include any assets worth more than $5,000)

Total **$_____**
(please add all of the amounts above)

If your estimated total is $5.4 million or greater, your entire estate will be subject to federal estate taxation. If the total is $1 million or greater, your entire estate be subject to Massachusetts estate taxation. This will mean less money will be available to your loved ones, and they may be forced to sell assets of family or sentimental importance in order to pay the tax bill. In most circumstances, both tax liabilities can be avoided or lessened with careful estate planning.

Even if your estimated total is less than both those amounts, an estate plan can help your loved ones avoid the probate process, which adds expense and delays the distribution of assets to heirs.

Your Family

Do you have children?	___Yes	___No
Are any of your children under 18?	___Yes	___No
Are you married?	___Yes	___No
Do you have children from a prior marriage or relationship?	___Yes	___No
Does your spouse have children from a prior marriage or relationship?	___Yes	___No

No matter what the value of your estate is, if you have children, you need an estate plan. If you die without a will with children and a spouse (and the children are also your spouse's children), the law will give the entirety of your estate to your spouse. That may be exactly what you want, but you need to also consider what happens if you and your spouse die at the same time, or if your spouse does not update his or her estate plan after your death. Who will raise your children, who will manage their assets while they are still minors if you both are gone, and how assets you leave behind will be used if your spouse has responsibility for children outside of your marriage, are all very important questions, and can all be addressed by a proper estate plan.

If you are unmarried and have no children, and die without a will, the law will distribute your assets among your closest living family members. Again, this may be fine with you, but you can still spare those family members the expense and delay of probate by creating an estate plan.

Your Plans for Potential Disability/Incapacity

Do you have a health care proxy?	___Yes	___No
Do you have a durable power of attorney?	___ Yes	___ No
Does your family know your wishes for medical treatment?	___Yes	___No

Do you have a family history of Alzheimer's or dementia? ___Yes ___No

An important part of an estate planning package involves things that happen while you are still alive, if you are incapable of making medical and other decisions,

either due to injury or illness. You may, for example, be very clear about what life-sustaining measures you do and do not want to have, but may be unable to communicate that in the moment with your medical team. A thorough estate plan will include documents that authorize the person of your choice to act on your behalf in terms of medical care, on the conditions and under the circumstances that you choose.

Your Existing Estate Plan

Do you currently have a will?	___Yes	___No
Has anything changed since you signed that will?? (new children, minor children became adults, divorce, remarriage, death of a spouse)	___Yes	___No
Do you know where your original will is?	___Yes	___No
Has it been reviewed in the past 10 years?	___Yes	___No

Many times people have a will drawn up at a certain point in their lives, and never think about it again. This can be a costly mistake. Imagine, for example, that you had a will drawn up when your children were very young, and it is now twenty years later. You may not have had enough assets in your name at that time to worry about estate taxes, and your primary goal was probably to ensure clarity about who would care for your children and manage the resources they inherited. Now your personal savings have grown, and you may have even received an inheritance yourself from your parents, and your children are adults. Your priorities and needs are simply different than they were twenty years ago. You may find yourself bumping up against either the Massachusetts or federal estate tax exemption threshold, and instead of figuring out who is going to raise your children, you have choices to make about their needs as adults and to what extent they are ready to handle a significant inheritance if something were to happen to you.

That scenario is just one of the reasons that we recommend you review your estate plan every few years, or at least on the occurrence of major changes (receipt of a substantial inheritance, change in status of children, divorce, remarriage, death of a spouse, for example).

PART TWO: WHAT TO LOOK FOR IN AN ESTATE PLANNING LAWYER

Who you trust with your estate plan is an incredibly important decision- after all, this is about taking care of your family on your passing, making sure that your life's work and savings are put to the uses you intend, and ensuring that in a time of turmoil and grief your loved ones have as few things to worry about as possible. That's pretty important stuff, that you want to make sure you entrust to the right person.

Here are a few questions we think you should ask when making your decision:

1. Will they listen?

Your estate planning lawyer should ask you a lot of questions. If they don't, then you may be getting a "cookie-cutter" estate plan that will not achieve your goals.

2. Do they understand your goals?

This is critically important. Everything about estate planning is about making sure what you want to happen can happen, and you may have different priorities than other clients a lawyer has served in the past.

3. Do they explain how the solutions they are offering meet your goals?

You don't need to become a lawyer to understand your estate plan, but you should understand it well enough to explain it to your loved ones, and a good estate planning lawyer can give you those tools. Just like they should be asking you a lot of questions, they should not be annoyed or impatient when you do the same.

4. Are you comfortable confiding in the lawyer?

Something that is surprising to many estate planning clients is how deeply personal the experience of contemplating your own death and/or disability and making a plan for it really is. If you don't feel truly comfortable with the estate planning lawyer, you may not disclose everything that he or she really needs to know to put the right plan in place for you.

5. Is the lawyer willing to preview and discuss their recommendations before asking you to commit to the entire package?

Sometimes lawyers will do this in a free initial consultation, sometimes they will offer a "working" consultation at their hourly rate or a flat fee before undertaking the drafting of a plan, but sometimes they will ask you to commit to a total package before letting you know what they propose to do and why. Whether you get this information from a free consultation or an initial paid consultation, it is important that you know what you are getting and why before you agree to more extensive legal work.

PART THREE: QUESTIONS FREQUENTLY ASKED ABOUT ESTATE PLANNING .

Q. What happens if I die without a will?

A. If you fail to plan your estate and die without a will, the laws of the Commonwealth of Massachusetts will create an estate plan for you. The entire system of "intestate" succession or "descent and distribution" is set forth by statute and is too complex for a detailed discussion here, but some surprising and frequently undesirable results can occur. The law prescribes both the persons to whom your property will pass and the division of your estate among those persons. The distributions provided by law are inflexible and may not satisfy your desires as to distribution of your estate. In addition, the amount to be distributed to your children will require a cumbersome and costly legal guardianship if the children are minors at the time of your death.

If you die without a will and if your descendants and the descendants of your marriage to your spouse are your only descendants, then your spouse will receive all of your intestate property.

- If you die without a will and if you are survived by your parents and do not have any descendants, then your spouse will receive $200,000 and ¾ of the balance of your intestate property.

- If you die without a will and if all of your descendants are also the descendants of your surviving spouse and your surviving spouse has descendants that are not your descendants, then your spouse will receive $200,000 and ½ of the balance of your intestate property.

- If you die without a will and if one or more of your descendants are not descendants of your surviving spouse, then your surviving spouse will receive $100,000 and ½ of the balance of your intestate property.

- If you die and are survived by your children only, leaving no surviving spouse, your entire estate will pass to your children. If they are minors, a guardianship will be necessary to manage their property.

Q. How will my estate be taxed at my death?

A. Your estate may be subject to at least two taxes: the federal estate tax and the Massachusetts estate tax. In addition, if you own real estate (or tangible

personal property) in another state or country there may be an additional estate tax due there.

The federal and the Massachusetts estate tax are based on the fair market value of your "gross estate" at the time of your death. At the option of your executor, an alternate valuation date of six months from the date of your death can be used.

Your gross estate will include the value of all the property in which you own an interest at the time of your death. Additionally, your gross estate may include property that you do not own, but over which you have retained or received certain rights or powers.

The estate tax scheme provides you with a "marital deduction" for bequests of property to your surviving spouse. The marital deduction in effect allows interspousal transfers to pass tax free because they are deducted from the value of the gross estate. In order to qualify for the unlimited marital deduction, property must be transferred to the surviving spouse in a fashion that satisfies the technical requirements of the Internal Revenue Code, such as an outright transfer or in certain types of trusts. *It is important that you let us know if either spouse is not a U.S. citizen.*

For federal gift, estate, and generation-skipping transfer tax (GST) purposes, the amount that an individual can pass tax-free at his or her death is $5 million. This amount is adjusted annually for inflation.

Massachusetts recently re-enacted its estate tax. The Massachusetts estate tax exemption is now $1 million. The Massachusetts marital deduction is now unlimited. If your estate plan is structured properly the Massachusetts and federal estate taxes will all be deferred until both you and your spouse die.

. **Q. What property will not pass under my will?**

A. Proceeds from life insurance policies and retirement benefits will pass in accordance with the beneficiary designations. In addition, property held in certain joint tenancies with a right of survivorship (e.g. joint bank or brokerage accounts with a right of survivorship) will pass to the surviving joint account holder. Therefore, you should review the beneficiary designations and account agreements to be sure they are coordinated with your will. <u>It is important to remember that even though these funds pass</u>

outside of your estate, they are considered part of your "taxable estate" for federal and state estate tax purposes.

. **Q. Who will raise my minor children after my death?**

A. If you die leaving minor children, the other parent ordinarily will raise and support them. If the other parent is not living, however, your minor children will require a "guardian." A guardian is an individual who is appointed by the court primarily to care for the person of a minor. You may appoint a guardian for your children in your will. If you fail to do so, the court will make the selection of a guardian. We recommend that you assume the responsibility for this important decision, rather than leaving it to a judge unfamiliar with your family situation.

Clients frequently tell us that they have chosen one of their parents as the guardian in the event of both clients' deaths, but in many situations, we believe that such a selection is unwise. For example, assume that the youngest child of the client is three years old and the client's parent is 68. When that child is 15 (a time when child-adult communication can be difficult under the best of conditions), the grandparent will be 80. Under these circumstances, another choice may be better for your child. You should look first to your contemporaries in your families (such as brothers, sisters, or cousins). If such family contemporaries are not appropriate, then consider friends with children in the same age range as yours. In any case, you should consult with the proposed guardian to ensure that the person is agreeable to assuming the significant responsibility.

If both parents die, your minor children may be left with substantial property interests that need management and protection. In that instance, the court will appoint a conservator to care for those property interests. Given that the conservator has only limited power over the minor's property, protective proceedings may be initiated in which the court will appoint a conservator to administer the children's property and affairs. In some instances, the conservator may fulfill the duties of making decisions concerning the child's medical care and personal concerns as well. A court appointed conservatorship can be a cumbersome and expensive manner of dealing with the property of the minors, however, and it should be avoided. The conservatorship for financial affairs can be avoided by proper planning for the use of trusts or custodianships for minors.

If you have planned your estate properly, the guardian should not experience financial strain in raising your children. We usually suggest that upon the death of you and your spouse, a trust be established for your minor children. The trustee should be encouraged to make generous distributions to assist the guardian, and the trustee can be authorized to provide funds to pay for any necessary expansion of the guardian's home.

Q. What is "administration" of my estate?

A. Administration of an estate involves the collection of assets, payment of liabilities, and distribution of properties to the beneficiaries or heirs. Administration of an estate is conducted under some degree of probate court authority and supervision, but different procedures are available. There will be a Personal Representative (see below) appointed to manage this process. A proper estate plan can minimize or even eliminate the assets that must pass through probate, so that your heirs will not have to incur the expense and delay of a probate proceeding.

Q. What is a Personal Representative?

A. A Personal Representative is a court appointed fiduciary who will serve as the primary representative of your Estate. If you have a will, you can choose who will be the Personal Representative, and name additional people who can serve in the event your first choice is not available. If you do not have a will, the court will have to appoint someone, and there may be disagreements among your heirs about who should fill that role.

Q. What is a trust?

A. Trusts are a common tool in estate planning that allow you to direct some or all of your assets to a trust for the benefit of your heirs instead of directly to them. Trusts can avoid the process of probating your will in court, which can be costly, provide for special needs children or adults without disrupting government benefits, protect the assets you leave behind from creditors, and, in some cases, protect your assets during your lifetime if you need long term care. A trust can also allow you to take care of the financial needs of your surviving spouse while preserving the core assets for your children when that spouse dies. Within the trust, you can identify a trustee, who will have discretion to administer the trust, but you can provide specific guidance to that individual about how you would like those decisions to be made. A trust can be revocable (you can change your mind),or irrevocable (you can't

change your mind). In some circumstances it is required that the trust be irrevocable in order to achieve your asset protection goals.

Q. What is a trustee?

A. A trustee is one to whom property is transferred for the benefit of someone else (the beneficiary).

We find that our new estate planning clients frequently misunderstand trusts. Many of our clients have heard a horror story about a trust, and the story often involves an impoverished widow-beneficiary who cannot extract enough money from the well-funded trust to maintain herself.

Present law, well-drafted trustee powers and professional trustees now make this concept of trusts obsolete. A trust can be designed to produce almost any result desired by the client if the client gives the trustee sufficient funds with which to work. We usually recommend that trustees be given very broad and adaptable powers to provide flexibility for future events. The trustee should be empowered to do what is best for the beneficiary, without being curbed by inappropriate restrictions.

If a trust appears suitable for your estate plan, you will need to exercise care in the selection of a trustee. The family member who comes to mind as a logical first choice may prefer not to deal with the management of your properties. If a corporate trustee appears appropriate, we will suggest that you have a conference with the representative of your bank's trust department. Further, you should consider giving someone, such as a committee, the power to change trustees.

Q. What is a durable power of attorney?

A. Several years ago, a new law was passed allowing you to authorize another individual or entity to manage your affairs. This relatively simple document is known as a durable power of attorney. A durable power of attorney is a written document in which you, as the principal, designate someone you trust, such as your spouse, another family member, a friend or a professional, as “your attorney in fact” or “agent.” Your attorney in fact is authorized to perform certain acts on your behalf. You may give as much or as little power to your attorney in fact as you desire. For instance, you may authorize your attorney in fact only to have the power to transfer your assets to a trust set up for your benefit, or the powers could be very broad and

authorize the attorney in fact to do anything with respect to your assets, including for example, have access to your safe deposit box, manage your investments, run your closely held business, sell and transfer your assets. The powers you give your attorney in fact will be in effect when the document is signed. Generally, a power of attorney terminates on the disability of the principal. If the power of attorney is "durable", it will not be affected if you become disabled or incapacitated. Not all powers of attorney are durable.

Q. What is a health care proxy?

A. A health care proxy is a document in which you may designate an individual to make decisions concerning your health care. While you are competent you are in charge of decisions which pertain to your health care.

Q. How frequently should I review my estate plan?

A. As a general rule, we suggest that you contact us every few years for a conference to review your estate plan and to update the information in your permanent file. We also recommend that you contact us in the event of a dramatic change in your finances or in your family situation. For example, a substantial increase in your estate (through increased life insurance, inheritance, gifts, or successful investments) may create opportunities for tax savings, as well as necessitate further family financial planning. A substantial decrease in your net worth may also necessitate a revision in your estate plan. A divorce, marriage, or second marriage, of course, will re-open completely the matter of planning your estate.

Ready to take the next step? Call our offices at (781) 784-2322 to schedule a free initial consultation.