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## Retain Control of Your Property & Maintain Peace Within Your Family Through Properly Planning Your Estate

I congratulate you for taking action to organize your estate matters, a process that is necessary so that your affairs are in order in the event of your death or disability. It is understandably difficult to address one's own death or disability, but there is nothing more important to your surviving loved ones than to have your affairs already in order so that life can continue for them without undue complications, worry, or even interference by outsiders. So that I may accurately analyze your circumstances to design a plan specifically for you, I ask that you read through this **confidential** questionnaire, fill in the blanks, and return it to me. If you have any questions, please write them down as they occur, and submit them with the finished questionnaire. In this document, I will provide some general information regarding the law of probate and estates to help you understand the process better. I hope you find the information helpful. If the information is of no interest to you, then skip to the questionnaire sections and fill in the blanks.

### Background

Under the Anglo-American system of laws, deceased persons cannot own property. This makes for good economics: if property is not used by its owner in commerce, the economy as a whole will suffer as a result. At the death of a property owner, the property that the decedent owns individually (i.e., in his or her own name alone) is required by law to be distributed among heirs or beneficiaries. While the property is between owners (decedent and his heirs), it is referred to as the “**estate of (name of the deceased)**,” and provides a conduit for the distribution of the decedent's property to living persons – hopefully those persons whom the decedent intended to benefit. The actual transfer of ownership of property from the deceased to the living heirs or beneficiaries is conducted by a “**personal representative**” (also known as an **executor**, if appointed by a will, or an **administrator** if there is no will) and supervised by the court under a system called **probate**. The property of the estate is distributed according to either the intent of the decedent as provided in a Last Will and Testament (“Will” for short), or by statute (usually a statute of decent and distribution, which is a government-imposed “will substitute”). For some property, transfer takes place immediately upon death “by operation of law,” as in the case of property owned jointly with rights of survivorship, or under a contract of life insurance. Because such property passes automatically to specific beneficiaries, there is no need to probate the property.

### Estate Planning Documents

A Last Will and Testament is a set of instructions to your executor directing the distribution of estate property as directed by you, the “**testator**” (the person making the Will), to those whom you decided shall benefit. Absent a valid will, the courts will order your property

distributed according to statute. In Virginia, the relevant statute is Section 64.2-200 of the Code of Virginia (referred to as the “statute of decent and distribution”).

For the living, the law requires people to be mentally competent as a requisite to making contracts or dealing with their property. When it comes to making a Will, competence does not arise to an assessment of skill or correct judgment. Legal capacity to make a will means simply that you are aware of certain day-to-day facts such as: who and where you are, the nature and extent of your property, the identity of your natural beneficiaries, the ramifications of your actions, etc. If there is a question about these issues, then the validity of the will comes into question.

Sometimes people become incapacitated due to illness, injury or aging. In such cases it is advisable to have a competent agent pre-appointed under a “**durable power of attorney**” who will be in place to conduct the business affairs of the person thus incapacitated. An appointment of such an agent (also called an “**attorney-in-fact**”) prior to the onset of a mental or physical disability may prevent the necessity of a costly legal intervention in the form of a competency hearing, which results in the appointment of a **guardian** or **conservator**. This type of intervention is extremely costly as it involves the courts and the hiring of lawyers to protect the rights of all the parties, including the appointment by the court of a separate lawyer for the incapacitated person.

Another document that one may consider is a “**living will**,” which is merely an acknowledged statement that declares the intent to remove any life support if one’s condition is terminal and there is no chance of recovery. A living will is often combined with a **special durable medical power of attorney**, which appoints an agent to make health care decisions for a person who is incapacitated to do so. Such decisions as choice of hospital and treatment can be made by an agent under a durable medical power of attorney.

### Estate and Gift Taxes

Taxation of your property upon your death – or if you make a large gift while you are living – may become an issue at some point either during your life or at your death. With the recently enacted “Taxpayer Relief Act of 2012”, the unified credit allowed on gifts and estates (otherwise known as the “exclusion amount”) was set at \$5,000,000, with a top marginal rate of 40% on assets valued at greater than the unified credit. The Act also made permanent the use of “portability” wherein a surviving spouse may use the deceased spouse’s unified credit (in addition to the surviving spouse’s) so long as an estate tax return was timely filed for the deceased spouse. This section of the new tax law effectively renders the use of the “credit shelter trust” obsolete, at least until new tax laws are enacted. For now, and for marital estates in excess of \$10,000,000, a strategy of trust planning would conserve a large portion of assets passing to heirs.

### Final Instructions to Survivors

Finally, you should set forth your final instructions (e.g., funeral request, choice of casket, place of burial) as a separate document from your Will. Final instructions are very

helpful to your loved ones in that it eliminates guesswork when it comes to what the decedent's choices are regarding burial, services and memorials.

Basic Information

Full Name: \_\_\_\_\_

Full Name of Spouse: \_\_\_\_\_

Former Name of Spouse (if applicable): \_\_\_\_\_

Date and Place of Marriage: \_\_\_\_\_

Does Either Spouse Have a Prior Marriage? (Yes/No)

Children:

	<u>Name</u>	<u>Date of Birth</u>	<u>Parent Other Than Spouse</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

(Use separate sheet to complete, if necessary)

Home Address: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

City or County of Legal Residence: \_\_\_\_\_

Length of Residence in Virginia: \_\_\_\_\_

Places and Dates of Residence Other Than Virginia: \_\_\_\_\_

\_\_\_\_\_

Dates and Places of Other Marriages:

\_\_\_\_\_

\_\_\_\_\_

Person(s) in the Family with Special Needs? \_\_\_\_\_

Special Needs Requirements: \_\_\_\_\_

(attach further instructions if necessary)

### Property Inventory

Probate law divides property into two basic types: real estate and personal property. Traditionally, real estate ownership is the most valuable property right that a person owns. Prior to the industrial revolution, land was the primary source of wealth, providing rents, crops and animal products that were sold or traded for other goods and services. Under principles of Anglo-American law, if someone dies without a Will (i.e., dies “intestate”), the decedent’s ownership interests in real estate vest immediately in the decedent’s “heirs at law” as determined by the statute of distribution. If the decedent has a Will, it serves as a type of deed in that it may transfer ownership of land to a preferred beneficiary rather than to an heir at law.

If real estate (or some types of personal property, such as a bank account) is titled jointly with another person with rights of survivorship, the decedent’s interests vest in the surviving co-owner at the time of death. This occurs by “operation of law” in that the transfer occurs immediately (and outside the Will) and without the need for probate. In such a case, the rights of the surviving co-owner or designated beneficiary on the account are superior to those of a beneficiary under a Will (in other words, the survivorship or beneficiary designation on the account will win over any provision in the Will).

The law formerly required that, if there was a Will, every possession of a decedent be transferred by Will, including tangible personal property (“things” such as furniture, cars, golf clubs). Today, statutes allows gifts of tangible personal property to be listed in a separate document, apart from the Will, so that the Will does not have to be changed whenever tangible property is lost or sold off.

The value of your property at the time of your death will determine whether or not death taxes will be imposed. For that reason, you should compute an approximation of your current net worth by adding the market value (i.e., a fair price received by selling the object) of all your property, real estate and personal property, and subtract any loans or other liabilities that you have.

Real Estate:

<u>Property Location</u>	<u>Titled Owner</u>	<u>Current Value</u>	<u>Loans/liens</u>
1. _____			
2. _____			
3. _____			
4. _____			
5. _____			

Intangible Personal Property (accounts, investments):

<u>Type of Property</u>	<u>Bank/Brokerage</u>	<u>Value of Property</u>	<u>How Titled</u>
Retirement Account (1): _____			
Retirement Account (2): _____			
Retirement Account (3): _____			
Investment Account (1): _____			
Investment Account (2): _____			
Investment Account (3): _____			
Checking/Cash on Hand: _____			
Savings Account (1): _____			
Savings Account (2): _____			

Insurance

<u>Type of Policy</u>	<u>Company</u>	<u>Face Amount</u>	<u>Cash Value</u>	<u>Owner</u>	<u>Beneficiary</u>
Life Insurance (1): _____					
Life Insurance (2): _____					
Life Insurance (3): _____					

Disability Income: \_\_\_\_\_

Long-term Care: \_\_\_\_\_

Business Interests: Identify interest(s) owned in business(es), assigning a value to each:

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Tangible Personal Property

Estimated Total Current Fair Market Value: \_\_\_\_\_

You should make an inventory of your tangible property. Make a separate list for each item that you wish to give to a specific person, naming the item and the proposed recipient of the gift. Once you have completed the list, sign the paper and place the list in an envelope addressed to your Executor. Keep the envelope with your Last Will and Testament.

Special Instructions, if any, regarding specific property: \_\_\_\_\_

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Beneficiaries

You may name one or more beneficiaries who will receive property from your estate (i.e., property owned by you in your name alone, or property owned jointly with another WITHOUT rights of survivorship). Bear in mind that any property that you own with a beneficiary named (e.g., bank account, life insurance, investment or retirement account) will pass to the beneficiary OUTSIDE of the Will. That means that property so designated CANNOT be used by your estate for final expenses or to pay the decedent's debts. The only property available for payment of expenses and debts, and for distribution according to your Will, is that which is owned by you separately or with another as a tenant in common, or a shared business interest.

For married persons, each spouse may want to leave everything to the surviving spouse. If this arrangement is agreeable, then each spouse executes what is sometimes referred to as an "I

LOVE YOU” Will, leaving all property to the other spouse. By leaving all your separate property to your spouse, you inadvertently disinherit your children. For example, your spouse inherits your share of marital property and all of your separate property. She may re-marry and then make a will leaving all “her” property (which includes your former property) to the new spouse. Also, when there are children of a prior marriage, a parent may want to provide for such children as well as provide for the surviving (i.e., current) spouse. Complications such as these may require the use of trusts—either a “living trust” (made while alive) or a “testamentary trust” (established by the Will). Potential estate tax liability will also require the use of trusts or other methods of arranging property so as to minimize tax exposure. Another excellent use of a living trust is to provide for use, management and transfer of property without the necessity of probate.

When everything is left to the surviving spouse, the survivor owns all the property absolutely. The survivor’s Will determines who ultimately gets the survivor’s property (which includes everything given to the survivor at the first spouse’s death). As stated in the prior paragraph, the property may be left to a new husband, or worse, to some “kind” interloper who moves in to “help” with the care of the elderly surviving spouse. Again, planning with a trust may prevent theft by such interlopers while ensuring that remainder beneficiaries such as children receive property according to the intentions of the first spouse to die.

For unmarried persons without children, none of the above may apply. You should leave your property to whomever you want: family, friends, or charities. You have to name each beneficiary in your will, and identify the property you want that person or charity to receive, whether it is a specific amount or a percentage of your estate. Gifts of tangible property should be specified in the separate list as mentioned earlier.

When making gifts by Will, bear in mind that pecuniary gifts (i.e., gifts of money) are a priority and other estate property may have to be sold to satisfy the gift if there is insufficient cash on hand in the estate. I recommend that pecuniary gifts be “precatory” and not compulsory (that is, you give the Executor the power to make the gift only if the Estate can afford it).

Please provide full names and locations (and addresses, if you have them) of your beneficiaries:

Primary Beneficiary (if only one beneficiary, such as your spouse):

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Secondary Beneficiary or Beneficiaries (if your primary doesn’t survive you):

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Tertiary (or next-in-line) Beneficiary or Beneficiaries (if your primary or secondary doesn’t survive you):

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If you become disabled (incompetent), who do you want to appoint as an agent to manage your business or financial affairs? \_\_\_\_\_.

How about your spouse? \_\_\_\_\_.

If you have minor children who will need a guardian or guardians, who do you want to serve as guardians (names and addresses)? \_\_\_\_\_

\_\_\_\_\_

Who do you want to have access to your medical information in the event of an emergency?  
Please provide names, addresses and phone numbers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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### Final Arrangements.

The death of a loved one is a very difficult time for their survivors. Making arrangements beforehand relieves a bereaved survivor of having to make difficult business decisions at an inopportune time.

Describe your pre-planned burial arrangements, if any: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If none, then provide the following information:

Do you want traditional burial with funeral or without a funeral; or cremation with or without a memorial service? \_\_\_\_\_

\_\_\_\_\_

Where to be buried/ashes scattered? \_\_\_\_\_

How will your final arrangements be paid (source of funds)? \_\_\_\_\_

Special instructions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Advisors

Estate planning involves legacy preservation, which means we are mapping a plan that is designed to maximize your net worth and to help retain the value of your estate so that your property is available to you upon retirement or in the event of disability. Besides your estate planning attorney, you have other partners in your wealth building, such as a financial advisor, banker, insurance agents, and your CPA. It is important that your plans, programs and portfolios are synchronized to better reach your goals. To that end, please allow access to your financial partners by providing their names and contact information below:

CPA: \_\_\_\_\_ Phone: \_\_\_\_\_

When did you last meet with your CPA? \_\_\_\_\_

Life Insurance Agent: \_\_\_\_\_ Phone: \_\_\_\_\_

When did you last meet with your agent? \_\_\_\_\_

Financial Advisor: \_\_\_\_\_ Phone: \_\_\_\_\_

When did you last meet with your Financial Advisor? \_\_\_\_\_

Banker: \_\_\_\_\_ Phone: \_\_\_\_\_

When did you last meet with your Banker? \_\_\_\_\_

Special questions or concerns regarding the planning of your estate: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(you may attach additional pages)