

Dear Clients and Colleagues,  
 We hope you are doing well.  
 We are available and here to help you.

## CORONAVIRUS (COVID-19) & YOUR ESTATE PLANNING: GET YOUR ESTATE IN ORDER NOW

With the uncertainty of the rapidly changing COVID-19 virus, we decided to devote this entire e-newsletter issue to what families and business owners should be doing right now to get their estate and affairs in order.

If COVID-19 has you thinking it is time to start or update your estate plan the following information will help you understand what you need and the next steps to take. The information in this newsletter is general in nature and does not constitute specific legal advice.

We are here to help and are presently scheduling appointments by phone or videoconference.

### **1. WHAT WOULD HAPPEN IF I WERE SERIOUSLY ILL? WHO WILL MAKE MY MEDICAL DECISIONS? You should have the following advance health care directives in place:**

#### **Health care power of attorney**

**This document appoints individuals to make medical decisions for you if you cannot yourself.** Without a health care power of attorney, Arizona law dictates that the following persons, in successive order, will be your surrogate medical decisions makers: spouse, adult children by majority vote, parent, domestic partner, sibling, or close friend. *Without a valid health care power of attorney there is greater chance of conflict among family and/or necessity of a legal Guardianship proceeding. It is far better that you designate the persons you know, like, and trust to handle your medical treatment decisions if you cannot.* It is also important to have the “what ifs” planned for; you should designate a primary Agent and successors in the event the primary Agent cannot act for any reason.

#### **Mental health care power of attorney**

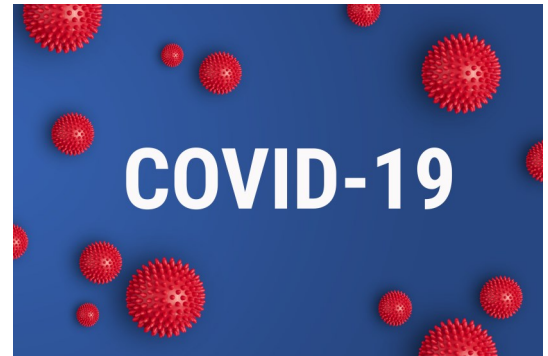
**This document authorizes the Agent you designate to consent to your in-patient mental health treatment in a hospital level setting.** *We recommend everyone have a mental health power of attorney just in case of need; this avoids mental health guardianship proceedings.*

#### **Living Will**

**This document sets-forth your end-of-life medical treatment wishes to be honored by your physicians and medical decision makers.** For example, if you would not want heroic life-sustaining medical treatment measures in an irreversible end-of-life circumstance. Living Wills are important so that your family knows your wishes and can honor them. *Without a Living Will, families can often be at odds and suffer undue emotional hardship.*

#### **HIPAA Authorization (Medical Release)**

Under HIPAA laws your medical providers may not share any medical information about you with anyone (even a spouse) without your written consent. With this document, you can authorize all your medical providers to share information with those who care about you at any time (e.g., whether you are then competent or incapacitated). *Without a HIPAA Release family may have difficulty getting even simple questions answered. This document is particularly helpful in a hospital setting; note, the release you signed at your primary care doctor’s office does not apply to the hospital or other medical providers.*



## 2. WHAT HAPPENS IF I AM SERIOUSLY ILL? WHO WILL HANDLE MY FINANCIAL MATTERS FOR ME?

You should have a **Durable Financial Power of Attorney** (even if you have a Trust). Unlike medical decision making, there is no legal surrogate authorized to handle your financial matters in the event of your incapacity. You should also know that your spouse does not have authority to manage your assets simply because you are married. Although your spouse can access funds held in jointly titled bank or non-retirement investment accounts, your spouse cannot manage your retirement account(s) or your interest in real property. *If you are suddenly incapacitated and do not have a durable financial power of attorney in place the only option to manage accounts/assets titled to you individually (e.g., retirement accounts, checking/savings, real property) and not in a Trust is a legal proceeding known as a Conservatorship. Conservatorship legal fees can be expensive and compliance with Court requirements is administratively burdensome.* It is critically important that you have a durable financial power of attorney in place, ideally dated within the last 3 years. A durable power of attorney may be in effect immediately or only upon your later disability. It is important to have the “what ifs” planned for; you should designate a primary Agent and successors in the event the primary Agent cannot act for any reason.

## 3. WHAT HAPPENS IF THE UNTHINKABLE HAPPENS?

*First, any accounts/assets that are jointly owned with rights of survivorship are presumed to be the property of the surviving joint owner.* Word of caution: parents ask about adding an adult child as co-owner to their bank accounts or real property to avoid probate; this strategy is not often advised for a variety of reasons. For example, consider the possibility that your child gets in an auto accident and gets sued! You do not want your assets subject to his creditors. Also, upon your death he loses the “stepped up tax basis”, which could cost thousands of dollars in lost capital gains tax. Yet, there are limited circumstances, such as long-term care asset protection planning where this strategy might be warranted for other reasons. So, without the approval of your CPA and attorney do not do this! **For the rest of #3 go to [www.bivenslaw/blog/](http://www.bivenslaw/blog/)**

## 4. WILL MY ESTATE GO THROUGH PROBATE?

With or without a Will, if the equity in the decedent’s probatable real property exceed \$100,000 or value of other probatable combined assets (e.g., bank and brokerage accounts) exceed \$75,000 the estate must go through probate with the Court. Of course, most individuals want to avoid probate to save time, money, and stress for their family which is why many people use Trusts (see discussion below).

## 5. WHY DOES EVERYONE TALK ABOUT TRUSTS?

Trusts are a fantastic and simple estate planning tool that almost everyone can benefit from using. There are many different types of trusts, but the gold standard and most common type of trust for basic estate planning is the revocable trust. With a typical revocable trust, you establish the trust (trustor) and manage the Trust (Trustee) for the benefit of yourself (lifetime beneficiary). You will need to transfer ownership of all assets possible to the Trust, this process is commonly referred to as “trust funding”. In the event of your incapacity, the Successor Trustee you designated will assume the responsibilities of managing the Trust assets for your benefit (akin to role of Agent under Durable Financial Power of Attorney), and upon your death the Successor Trustee will have authority to administer the trust estate, including distribution to the beneficiaries (akin to role of Personal Representative). There are several significant advantages to a Trust.

First, practically speaking financial institutions prefer to work with Successor Trustees over Agents under power of attorney. If you wish to make things as easy as possible for your trusted helper(s) then we strongly encourage incorporating a Trust into the estate plan.

Second, only the acting Trustee has authority to manage the trust assets. If you later became vulnerable (e.g., cognitively impaired due to brain injury, dementia, etc.) your Successor Trustee could assume responsibility thereby preventing you from unknowingly wasting or mismanaging the assets.

Third, let’s say you have four adult children and want them to inherit equal shares of your estate without probate. You could designate all four children as POD beneficiaries on all bank and brokerage accounts, life insurance policies and retirement accounts, and all four as the beneficiaries of your real property by beneficiary deed. While this strategy avoids probate, you would likely create worse problems because then all four would have to work together to accomplish the sale of real property, payment of your debts/ expenses, etc. which always increases potential for family conflict. With a Trust, by contract, the Successor Trustee handles all administrative duties and is fully accountable to the beneficiaries. Additionally, you can always designate a third-party professional (e.g. licensed fiduciary, bank or trust company) to handle the administration if there is significant conflict among family members, or no one has the time or practical skills required to administer the trust estate. Lastly, properly funded trusts avoid probate.

## 6. WHERE IS EVERYTHING? HOW WILL MY FAMILY FIND MY DOCUMENTS?

Clients often ask where should I keep my estate planning documents? Should I give copies to my family? How will people get the documents when needed? Should I keep the documents in a safety deposit box at the bank? We typically recommend clients keep their original estate planning documents (and a set of paper and electronic copies) as well as the Private Information Guide described below (or something similar) at home in a fireproof lockbox or safe. Note, unless someone else is acting as Agent or Trustee now, they do not need copies now. Although you may not wish to give out copies now, we do recommend you advise your designated Agents/Personal Representatives/Successor Trustees where you keep the documents (and how to access them) and provide your professional advisors (e.g., attorney, CPA, financial advisor and related professionals) contact information. In addition, medical directives may be registered for free with Arizona Secretary of State at <https://azsos.gov/services/advance-directives>, and copies should be given to current treating physicians.

For the rest of #6 go to [www.bivenslaw.com/blog/](http://www.bivenslaw.com/blog/)

## 7. IF YOU ARE A BUSINESS OWNER, DO YOU HAVE SUCCESSION PLAN IN PLACE?

If you are a business owner, do you have a succession plan in place for the operation of your business in the event of your incapacity and the management and ownership of your business if you die? If you are not sure, you may want to take this opportunity to review your LLC or other corporate documents and talk with your business and/or estate planning attorney to be sure any loose ends are tied up.

## 8. CAN I SIGN ESTATE PLANNING DOCUMENTS AT HOME WHILE SELF-QUARANTINED DUE TO COVID-19?

All of the above-described estate planning documents, with the exception of a Trust and hand-written (holographic) Will [not recommended!], require either witness(es) or a notary to be present at time of signing, or both in some instances. The witness and/or notary requirements are different for each document and should be discussed with your estate planning attorney. For the rest of #8, go to [www.bivenslaw.com/blog/](http://www.bivenslaw.com/blog/)

## 9. DO I REALLY NEED A LAWYER? CAN'T I JUST GO ONLINE AND DOWNLOAD SOME FORMS OR USE A LICENSED DOCUMENT PREPARER TO SAVE A LITTLE?

So, here is where we get brutally honest. In our experience, the saying "you get what you pay for" is true in estate planning. Yes, you can go on-line or use a non-lawyer licensed document preparer to prepare these critical legal documents. But why would you? Similarly, I can watch tutorial videos online or ask someone at the hardware store how to re-wire my home. That said, I am not a licensed electrician and won't know I have a problem until my house is already on fire. The real issue with use of online services and licensed document preparers is that you are supposed to know everything there is to know about estate planning first; non-attorney legal document preparers may provide general legal information but may *not* give legal advice and the forms you generate online are only so good as the answers you give to pre-populate the forms. With estate planning, the risk in not working with an attorney is that you won't likely know there is a problem until after your incapacity or death. Based upon our experience, your family will not appreciate the cleanup required (often in Court) that could have been avoided if done right the first time. There is nothing cookie-cutter about an estate plan; each plan is unique to your personal circumstances, family dynamics, goals and objectives. Whether your estate requires simple or advanced planning, working with an experienced estate planning attorney invariably saves money, time and stress for you and your family in the end.

**AS ALWAYS, WE ARE HERE TO HELP. TO SCHEDULE YOUR PHONE OR VIDEOCONFERENCE MEETING TODAY WITH ONE OF OUR ATTORNEYS, PLEASE CALL OUR OFFICE AT (480) 922-1010 OR EMAIL [INFO@BIVENSLAW.COM](mailto:INFO@BIVENSLAW.COM)**

We are honored to announce that we ranked  
**Top 2** among all Arizona law firms in 2020 :



*Thank you for all of your support*

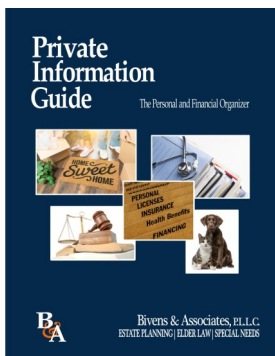
**#1 Estate/Trusts**

**#2 Elder Law** (second year in a row)

**#2 Law firms with fewer than 21 attorneys**

**AT HOME SOCIAL DISTANCING? THINGS TO DO TO AVOID GOING STIR CRAZY**

1. Maintain principles of self-care, i.e. take care of yourself.
2. Use social networks to stay connected with family/friends. (Zoom.us has free videoconference)
3. Play games - learn a new one/play online with friends.
4. Keep moving – get up often/walk/You Tube Exercise Videos/go outside.
5. Do something new – calligraphy, handmade gifts, origami, new recipes, anything new and that will stimulate your brain.
6. Watch live-cams of your favorite animals at zoos around the world.
7. Crossword or jigsaw puzzles.
8. Listen to audio books online.
9. Play your favorite song, sing and dance.
10. Go through old pictures and scrapbooks.
11. Organize cabinets and drawers.
12. Go to an art museum - online virtual tours.
13. Write notes or letters to family and friends.
14. FaceTime family and friends, often.
15. Listen to a Podcast. There is one for everything.
16. Write down favorite stories, memories, poems or create your biography.
17. Meditate - use an app/website like headspace.
18. Spring cleaning and organizing (keep, give away or throw away).
19. Learn a new language for free. Check out Duolingo.com.
20. Use the Private Information Guide: Personal and Financial Organizer.
21. Call us to get your estate plan in order.
22. Play with Legos, not just for kids.
23. Take deep breaths
24. Keep your sense of humor. Learn a new joke.



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Financial Organizer*

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Benefits*

