



Fall 2023

Rochester (507) 288-5567

Winona (507) 615-0253



Estate Planning Pop Quiz

School is back in session, signaling the return of new school supplies, homework, and pop quizzes. Try your hand at this estate planning pop quiz to see if your knowledge of estate planning makes the grade and if it is time for us to schedule a meeting.

Question #1: True or false? You must name the same person to make both your financial and medical decisions on your behalf.

Answer: False. When choosing who should be your trusted decision makers, you should select individuals based on their strengths. In other words, you should consider what characteristics or traits each decision-making role requires and select the people who have those traits. For example, if one of your children is a doctor and another child is a CPA, then it makes sense that the doctor would make medical decisions on your behalf and the CPA would make financial decisions on your behalf. It is also a common misconception that you must choose the same person to be your children's guardian and to handle the money that you leave for your children. This is false: you can choose the person who you think will make the best and most loving guardian for your children and choose another person to handle the finances.

You may also need to consider that choosing the right person for the job could mean going with a professional. If none of your children have the organizational skills or focused temperament to handle administering your estate, or if your children are the type that would second-guess every decision made by a sibling, then perhaps the best option would be to appoint a professional to act as one of your trusted decision makers. This could end up preserving your property and family relationships.

Question #2: True or false? If I do not create my own estate plan or if my plan fails to provide for my current situation, my state's law will decide what happens.

Answer: True. Every state has default laws (called *intestacy laws*) that kick in if a person has not made their own estate planning choices. These laws are designed with a "one size fits most" situation in mind. For example, if you are married, your spouse will usually have priority with regard to making decisions and receiving your property because most married people would choose their spouse. However, there are innumerable reasons why you may not want your spouse to make certain decisions or receive certain items of property. For this reason, it is essential that you create your own estate plan and make your own decisions. If you have not created or finished your estate plan, now is the time to stop procrastinating and make an appointment with us to complete it.

If you have an estate plan, consider reviewing it in case your existing estate plan does not accurately reflect your current situation. For example, perhaps one or more of the people you chose as your trusted decision makers or beneficiaries is no longer living or able to serve, or there

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may be other people (e.g., a new child or a new spouse) who you want in those roles instead. When you experience a significant life event such as a marriage, divorce, retirement, change of occupation, or birth or death of a loved one, a change to your estate plan may be necessary.

Further, the ever-changing laws governing taxes and estate planning may necessitate an update to your estate plan. Even if no change is required, a periodic review with one of our estate planning attorneys will give you peace of mind knowing that your plan will work as anticipated when the time comes.

Question #3: True or false? A will accomplishes all of the same goals as a trust, but a will is cheaper.

Answer: False. While both a will and a trust can give instructions about how you want your property to be distributed upon your death, one of the biggest differences between a will and a trust is that a will has no effect until the time of your death. A trust, on the other hand, can be utilized to deal with a period of incapacity (a time where you cannot make or communicate your wishes) that may occur prior to your death, which can be very helpful for loved ones trying to care for you. For example, Son wants to sell Mom's home to help pay for the cost of an assisted living facility for her. If Mom only has a will, then Son has no power to sell the home and must go to court to be given the authority to act on Mom's behalf. This situation might be avoided if Son was named as an agent under Mom's financial power of attorney, but relying on this as the only method can sometimes be problematic. On the other hand, if Mom's home was owned by her trust, then Son, acting as successor trustee, would have the power and authority to sell Mom's home without court intervention.

In addition, a will often guarantees that your loved ones will have to go through the probate court process upon your death. The personal representative who you have named in your will must be approved and appointed by a probate court to have the power to deal with the property in your estate. On the other hand, when you use a trust and properly fund it, your successor trustee can immediately step in and deal with the property in your trust without any court intervention.

No matter your score on this estate planning pop quiz, you can be an A+ student by ensuring that you have a specially tailored plan in place with carefully chosen trusted decision makers. We can help you create or update your plan to ensure that it will work as you intend when the time comes.

Farm Facts: Minnesota is the **2nd largest pork** producer in the US with over 9 million hogs on farms across the state.

They support over **22,500 jobs**, many of which are found right here in Southern Minnesota.



Executive Assistant,
Elizabeth Karsell
started September
20th and works in
our Rochester office.



Associate Attorney,
Marc Riese started
October 2nd and
works in our
Rochester office.

Transfer-on-Death Deeds and Medical Assistance Recovery

A Transfer-on-Death Deed ("TODD") can be a good tool for avoiding probate and simplifying the estate administration process in certain circumstances. To be valid, a TODD must expressly state that the deed is only effective upon the death or deaths of one or more grantor owners, transfer the real property interest to one or more grantee beneficiaries, and must comply with all provisions of Minnesota law applicable to deeds of real property. A TODD must also be recorded in the county in which at least part of the real property described in the deed is located and must be recorded before the death of the grantor owner upon whose death the conveyance or transfer is effective.

After the death of the last grantor owner, the property can then transfer to the named grantee beneficiaries. The named beneficiaries must execute and record an Affidavit of Identity and Survivorship, together with a certified copy of the death certificate and a Medical Assistance Clearance Certificate, showing that there are no outstanding Medical Assistance claims or liens against the property for benefits received by the grantor owner during his or her lifetime. Without the accompanying Medical Assistance Clearance Certificate, clear title cannot pass to the grantee beneficiaries or any subsequent owner of the property.

To obtain a Clearance Certificate, an Application of Medical Assistance Clearance must be submitted to the county in which the grantor owner was living at the time of death. The county will then complete a search using the grantor owner's date of birth and social security number to determine whether or not there were benefits paid on his or her behalf. The county also runs a search on any predeceased spouse to determine whether the spouse also received care.



If either or both the grantor owner or the grantor owner's predeceased spouse received Medical Assistance, there will likely be a Medical Assistance lien placed against the real property to secure payment of any Medical Assistance claims. Liens last for either 10 or 20 years. The lien must be paid or otherwise satisfied in full before marketable title to the property can be transferred.

For example, Mary is the grantee beneficiary on a TODD for real estate owned by her father, John. John's wife, Jane, died ten years ago, and jointly owned the property with John at the time of her death. Mary's attorney submitted an Application for Medical Assistance Clearance, which showed that while John did not receive Medical Assistance benefits during his lifetime, Jane did receive benefits. The State of Minnesota recorded a lien against the property for benefits received by Jane. Mary wishes to sell the property, but must satisfy the Medical Assistance lien before marketable title to the property can transfer to the buyer. Mary decides to pay the Medical Assistance lien out of the closing proceeds on the sale. After the lien has been satisfied, a release will be recorded with the county to show that there is clear title to the property.

Minnesota law contains protective provisions for a surviving spouse as it relates to a homestead. For as long as the surviving spouse is living on the property, a Medical Assistance lien cannot attach (be enforced). Upon the death of the surviving spouse, the lien can attach. It's often a shock to families who are unaware that one or both of their parents were receiving Medical Assistance in some capacity and that the receipt of benefits subjects the estate to Medical Assistance recovery, even if the first parent to die has been gone for quite some time.

Office Hours and Locations

Rochester: [1801 Greenview Drive SW, Ste. 102](#)

Monday – Thursday 8:30 – 4:30

Friday 8:30 – 3:30

St. Charles: [819 Whitewater Ave](#)

Tuesday 12:30 – 4:30

Thursday 9:00 – 12:00

By appointment

Winona: [65 Johnson Street](#)

Monday – Thursday 8:30 – 4:00

Friday 8:30 – 3:30

To schedule an appointment in any of our offices, please call (507) 288-5567.



Wagner Oehler, Ltd.
(507) 288-5567
www.wagnerlegalmn.com

Events Schedule

Could an LLC be What Your Plan is Missing?

Thursday, November 30, 2023 from 2:30 PM–4:00 PM
Rochester Area Foundation Community Room (2nd Floor)
12 Elton Hills Drive NW, Rochester, Minnesota

For all of our current events, or to sign up, please go to www.wagnerlegalmn.com/events.



We received the following:

- Best Law Firm – Finalist
- Best Attorney – Jason Wagner

Thank You for all of your support!
We so appreciate your recognition.

WAGNER OEHLER, LTD.

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