



CRITICAL ESTATE PLANNING DOCUMENTS

A comprehensive estate plan consists of more than just preparing a Will or Trust. In many cases your Power of Attorney, Health Care Proxy or Living Will may be even more important than your Will or Trust. Please note that the information contained in this handout is to provide you and your family with an overview of common estate planning documents and their importance. Although this information is provided to give you some insight as to the importance of a comprehensive estate plan, it is not a substitute for competent legal advice.

LAST WILL AND TESTAMENT



A Will is a legal document written to direct how your property will be distributed after you pass away. It is a “testamentary” document meaning it is not effective until after an individual dies. “Probate” is the legal process that directs the transfer of your property (the “estate”) to your beneficiaries whom you name in your Will. The probate process starts by proving your Will is valid which is done in Surrogate’s Court (a special Court that hears cases involving the affairs of deceased people). Most people mistakenly believe that a Will controls who will receive *all* of their assets when they pass away. However, this is not always the case. For example, jointly owned property (such as joint bank accounts) and assets with beneficiary designations (such as life insurance policies or retirement plans) pass automatically to the joint owner or the named beneficiary even if your Will directs otherwise.

ESTATE PLANNING WITH TRUSTS

A Trust is a legal document that instructs a Trustee to manage property for a third party. Although there are many different types of Trusts in this case I am only talking about Revocable Living Trusts (RLT’s) which are commonly used in estate planning. An RLT is a trust that can be changed or revoked by the person setting up the trust (the Settlor). The Trustee is the individual or organization appointed to oversee and manage the trust. Often, the person setting up the Trust is also the Trustee. Once your RLT is created and funded (by transferring your property to the Trust) it provides for management of your assets while you are alive. It also allows you to specify who will handle your finances if you are unable to. After you pass away, your RLT directs how to distribute your remaining property (like a Will but typically without Surrogate’s Court involvement). It is important to note that a Trust will only control property that is placed into the Trust or payable directly to the trust such as by a beneficiary designation.

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WHAT HAPPENS IF YOU DON'T PLAN YOUR ESTATE

It is important to know that if you do not prepare your own estate plan, New York State will do it for you. If you are a New York State resident and die without a valid Will or Trust, New York State law directs who will receive your property. For example, if you are married and have children, New York State law directs that your estate be divided between your spouse and children. This is often in contrast of what many couples want as most couples normally leave all of their property to their spouse if he or she is still living and to the children only after both parents have passed away. That is why it is very important to prepare a comprehensive estate plan so that you control who receives your property, not New York State. Planning becomes even more important if you have minor children or in second marriage situations.

POWER OF ATTORNEY

A Power of Attorney form appoints an individual to act as an agent to represent you or to act on your behalf regarding financial matters. Although there are many different types of Power of Attorney forms, our focus here will be limited to a Durable Power of Attorney. "Durable" means that the Power of Attorney will continue after you become disabled and can no longer act for yourself. If a Power of Attorney form is not designated as "Durable" it may revoke automatically in the event of your disability (which is likely when you need it the most). It is very important to sign a Power of Attorney form as a part of your comprehensive estate plan so that an agent can continue to manage your financial affairs if you become unable to act for yourself. Having a Power of Attorney appointed is especially important to prevent the time consuming, costly and often embarrassing need for a court proceeding to appoint a guardian.



HEALTH CARE PROXY

Your Health Care Proxy form is a document that simply appoints an individual to make medical or health care decisions for you. Unlike a Power of Attorney form that is normally effective as soon as it is signed, a Health Care Proxy does not have the authority to make decisions until you are unable to make decisions for yourself. Your Health Care Proxy will work with your physicians and your other medical caregivers in order to make health care decisions on your behalf.

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LIVING WILL

A Living Will is a legal document that is written to ensure that your wishes in regard to medical care, medication, and resuscitation are followed when you are unable to communicate your own wishes. A Living Will can include the refusal of certain medical treatments pursuant to your wishes. This is important as your health care proxy may not be able to make decisions on certain procedures if you have not put them in writing. For example, in New York State you must clearly state your wishes regarding artificial nutrition and hydration. If you have not clearly specified your wishes on these issues, and a relative requests artificial nutrition or hydration, your medical caregiver could be required by law to provide it. Your Living Will form ensures that you and your selected agent make these decisions rather than by a relative you may not want involved in the process or with a particular decision.

HIPAA RELEASE



HIPAA (the Health Insurance Portability and Accountability Act of 1996) requires health care providers to be very careful how they release your health care information. All health care providers - doctors, nurses, dentists, pharmacists, etc. - are required to make reasonable efforts to limit the release of protected health information to only releasing the minimum information necessary to accomplish the intended purpose of the particular disclosure or request for disclosure. A HIPAA release allows you to name one or more persons who will be able to

have access to all of your information. This is especially important to have in your estate planning so that your health care proxy can have access to complete medical information in the event that they needed to make a medical decision on your behalf.

IMPORTANT INFORMATION REGARDING ADVANCED MEDICAL DIRECTIVES

It is not enough just to prepare and sign Health Care Proxy and Living Will forms. It is also very important for you to discuss your wishes with your agent and with your physician. Because of rapid advancements in technology, a form that you sign today may not cover certain types of treatments that may be available in the future. That is why it is important for you to discuss your philosophy regarding medical care with your agent and your physician. By discussing your wishes with your agent and medical provider they will be able to determine appropriate treatment based on your expressed intentions. This will be especially helpful regarding decisions on treatments and procedures that may not have been available at the time you prepared your forms. You should also discuss your wishes with your family so that everyone knows your wishes. Doing so could help prevent disagreements among family members after you are no longer able to express your wishes.

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