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Some Basic Estate Planning Documents

1. Last Will and Testament
2. Statutory Durable Power of Attorney
3. Medical Care Power of Attorney
4. HIPAA Authorization
5. Out-of-Hospital Do Not Resuscitate Order
6. Directive to Physicians
7. Guardianship Designation
8. Appointment of Agent to Control Disposition of Remains

1. Last Will and Testament

A last will and testament directs how your property will be distributed when you die. A will can also create trusts for your spouse or children and designate a guardian for your minor or disabled children.

Most people do not have a will. The most common reasons are procrastination, denial, and avoiding thoughts of death or incapacitation.

One disadvantage of not having a will is undesired consequences. For example, if your spouse dies without a will and your spouse has children or grandchildren who are not related to you, the children or grandchildren inherit 2/3 of your spouse's community property, 2/3 of the spouse's separate personal property and have a 2/3 life estate plus future interest in the spouse's separate real property.

Another disadvantage of not having a will is time and expense. It simply takes more time and costs more money to probate an estate where there is no will.

Don't have a bad heir day. It is important to coordinate the disposition of valuable assets within your estate (often real estate, bank accounts, and investment accounts) with the disposition of assets which often pass outside of your estate (life insurance, annuities, retirement benefits and accounts held in joint tenancy). Studies indicate that most Americans believe their retirement savings will be divided according to the instructions in their will. In fact, who inherits retirement money is usually determined by the language on beneficiary designation forms that many people have long since forgotten or lost. Similarly, one child may split the estate equally with other children but may get all of the life insurance proceeds because of the beneficiary designation on the life insurance policy, or one child gets all the money in a bank account or brokerage account because the accounts are designated as joint tenancy accounts with only one child as the surviving joint tenant.

2. Statutory Durable Power of Attorney

A Power of Attorney is a document in which you appoint your agent (someone you trust such as a family member or friend) as your agent to manage your financial affairs if you are no longer capable of managing them yourself. Your agent has the authority to act in your name.

This can be important if you are physically or geographically unable to handle your legal affairs.

If you are disabled and do not have a Statutory Durable Power of Attorney, it may be necessary to have a court-ordered guardianship to appoint someone to handle your legal affairs which can be expensive and time-consuming.

3. Medical Care Power of Attorney

This document allows you to designate an agent (customarily a family member or close friend) to make medical decisions for you in the event you become incapable of making those decisions.

Individuals are not able to make their own health care decisions if they are unconscious, seriously ill, in an accident, or cannot communicate their wishes.

If you don't have a medical care power of attorney, the law requires that your doctor consult with your spouse, legal guardian, reasonably available adult children, parents, or nearest living relative.

Your agent does not have to be a family member but he can be and customarily is a family member. You should choose someone you trust and who is willing to act on your behalf. The agent cannot be your doctor, health care provider, residential care provider or their employee.

4. Health Insurance Portability and Accountability Authorization (HIPAA)

A HIPAA Authorization allows you to name an individual who can have access to your medical information so that your health care providers have no reservations about sharing medical information with those whom you have designated.

Without the document, federal law limits who can have access to your medical information and records.

5. Out-of-Hospital Do Not Resuscitate Order

With this document, you can direct emergency medical services staff, hospital emergency room personnel, and other health care professionals acting in an out-of-hospital setting, to withhold certain life-sustaining treatment such as cardiopulmonary resuscitation.

6. Directive to Physicians (often called a Living Will)

This document allows you to instruct your physician not to use artificial methods to extend your life in the event you are diagnosed with a terminal or irreversible condition.

If your condition is terminal or irreversible, you may not be able to communicate your wishes. A Directive to Physicians lets your medical care providers and loved ones know whether you choose to remain on artificial life support.

This gives you some control over how and when you die by avoiding or minimizing pain, a drug induced haze, nausea, or depression.

7. Guardianship

A competent parent of minor or disabled children may designate a guardian in the event of the parent's death or disability.

If neither parent of a minor or disabled child is living or capable of acting as guardian, a probate judge will make the decision as to who the guardian will be. A guardianship designation is an important consideration when a judge is making the decision.

Also, a competent adult may designate a guardian in the event of the adult's later disability. In addition to designating your guardian, you may expressly disqualify persons you do not want to be appointed guardian.

Two recent articles illustrate problems which may arise when there is no guardianship document for an adult.

A headline in *The Wall Street Journal*, August 17, 2006, reads: “Latest Custody Battle; Who Gets Mom.” The article noted that as the population ages, lawyers see an increase in adult-guardianships and “parent snatching.”

The New York Times reported that the 85-year old son of Brooke Astor, the longtime philanthropist and doyenne of New York Society, was sentenced to one to three years in prison for siphoning millions from her estate before she died. (*The New York Times*, December 21, 2009)

8. Appointment of Agent to Control Disposition of Remains

For individuals who are in partnerships but not married, or individuals who prefer to be buried with a prior spouse, the appointment of an agent to control the disposition of remains gives control to whomever you designate to dispose of your remains.

An article in *The Dallas Morning News*, March 18, 2010, indicates how important this can be. The headline reads “Body remains at mortuary while fourth wife, children from first marriage at odds.” The remains of Army General Hugh G. Robinson, a decorated Vietnam War veteran and White House assistant to President Lyndon B. Johnson, remained at a Dallas funeral home 17 days after his death – caught in a tug of war between factions of his survivors.

Another article in *The Dallas Morning News*, July 1, 2012, is headlined “Feud leaves racer Carroll Shelby’s body in Dallas morgue for weeks”. The article details that his body remained in the Dallas County morgue because of a bitter legal dispute between his wife, Cleo, and his three children because of a caustic custody battle. Apparently the oldest son, Mike, had a medical directive instructing him to cremate him and bury a portion of his ashes in the family plot outside Leesburg, Texas, while the wife stated that Shelby told her he wanted to be “buried” which she interpreted differently than Mike. On July 23, 2012, *The Dallas Morning News* reported a proposed settlement calling for Shelby to be cremated, with 20 percent of his ashes goes to each of his three children, 20 percent to be buried in the family plot and another 20 percent to his widow Cleo Shelby.

9. Additional considerations

Let the executor of your last will and testament and the agents in your power of attorney and medical power of attorney know where the originals of the documents are and make provisions for them to access the documents. Give them the combination to the safe or access to the bank deposit box if that is where the documents are kept.

Leave a list of login passwords and access information to financial records and other online legal sites (banks, credit cards, and/or financial institutions, for example).

If not specified in your will, make your wishes about funeral arrangements and burial plots known.