

GETTING BACK TO BASICS: WHAT YOU NEED IN AN ESTATE PLAN

The anxiety that has been caused by the new coronavirus has sparked numerous conversations about what documents a person needs as part of an estate plan. A quality estate plan should encompass more than just a Last Will or Revocable Trust Agreement. The estate plan should also include incapacity documents, such as a durable Powers of Attorney for health care and financial decisions as well as a Living Will declaration. Any person over the age of eighteen (18) should have these documents completed.

GENERAL DURABLE FINANCIAL POWER OF ATTORNEY

A General Durable Financial Power of Attorney (“POA”) grants another person the authority to make financial decisions and sign financial documents on your behalf. This could be because you are incapacitated, because you are in isolation/quarantine, or you are just absent for any reason, such as travel or scheduling conflicts. The “durable” in the title indicates that the effectiveness of the document will continue during your incapacity. However, all POAs end at death.

HEALTH CARE DURABLE POWER OF ATTORNEY

A Health Care Durable Power of Attorney is similar to the Financial Power of Attorney except for health care decisions only. As long as you have capacity to make your own health care decisions, you remain in control. However, if you lose capacity this document allows another person to make decisions for you. Additionally, the Health Care Power of Attorney grants another person access to your protected health care information and allows the person (your agent) the authority to talk with doctors and medical personnel about your condition. While the Health Care Power of Attorney also ends at death, it does allow your health care agent to make arrangements and carry out your wishes regarding your funeral and disposition of your remains.

LIVING WILL DECLARATION

A Living Will Declaration is a written statement by you directing what you want to happen if you are near death, will not recover, and cannot communicate. The document is only activated if (i) two doctors agree that you have a terminal condition (a condition that will cause death in the near future and for which you are unlikely to recover from) and (ii) you cannot communicate your desires regarding the continuation of life sustaining treatments. Life sustaining treatments include being intubated or ventilated (being on a breathing machine) or receiving artificial food and water (through a feeding tube). If you have strong feelings about what you want to have happen, whether it be balancing quality with quantity of life or religious beliefs about the dying process, you should ensure that the Living Will Declaration specifies your wishes, or appoints a trusted individual who knows your wishes and will carry them out.

LAST WILL

The Last Will is the estate planning document that most people are familiar with. It identifies your family, your chosen beneficiaries, and who you want to be in charge of your estate at your death. The Last Will is the most formal of all of the documents and requires the document to be submitted to the probate court within six (6) months of your date of death. Probate is a court-supervised process to identify your assets, your creditors, and your beneficiaries and then direct the orderly distribution of your assets to your creditors and beneficiaries. If you don't have a Last Will to identify your beneficiaries and your estate representative, the court will follow a default set state laws for identifying these people.

REVOCABLE LIVING TRUST

A Revocable Trust or Living Trust provides all the benefits of a Last Will, such as directing who will receive your property. Additionally, property that is placed in a revocable trust will not, on the death of its maker, go through the state probate court system. Avoiding probate can save your estate time and attorney fees. Additionally, because probate is avoided, the distribution of your assets will remain private and will not become a matter of public knowledge. In probate, court filings are necessary, and these filings are public records. A mistake many people make with Revocable Trusts is failing to transfer their assets to the Trust during life or directing assets be distributed to their Trust, such as through a beneficiary designation or pay-on-death designation, at death. The Revocable Trust only works to avoid probate when it owns your assets.

COSTS AND ALTERNATIVES

A basic estate plan package (Last Will, Durable Powers of Attorney, Living Will Declaration) will cost between \$1,000 – \$2,000. Adding a Revocable Trust provides additional benefits but also adds additional expense.

While you can find websites or forms on the internet, not all of these are created equal. More often than not, you end up getting what you paid for. Even when the documents themselves include all necessary provisions, if the documents are not signed properly and with the required formalities, you can end up with no estate plan at all. Having an attorney review the documents and ensure that the documents are signed properly is worth the expense.

All of the documents listed above are an important piece of a solid plan. Additionally, all of the documents can be changed in the future to reflect changes in your life, different goals, or preferences for different decision-makers. The important thing is to choose to plan. If you're ready to get started contact our Estate Planning Group at 316-631-3131.

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