

Introduction to Estate Planning

Billions of dollars in assets are going into probate every year because people haven't planned properly and unfortunately, that number is increasing. I give people piece of mind by helping them protect themselves, their family, and their assets. I use tools like wills, powers of attorney, and trusts to do a number of things:

- Make provisions if a person becomes incapacitated
- Provide financial security for someone's family
- Minimize taxes, expenses, and court delays

All these things, when taken together, wrap a layer of protection around individuals and families. And they are able to preserve wealth and assets for generations to come. I cannot emphasize the importance of being proactive in managing your estate to protect your assets and to ensure that your wishes are exercised relative to your well being.

At a minimum, I recommend the following *basic estate planning tools*:

Your **Last Will and Testament** is the vehicle that usually collects instructions to distribute property and belongings. In addition to your Last Will and Testament, I recommend: Power of Attorney for Healthcare, Power of Attorney for Property and an Advance Directive/Living Will. These documents govern ones affairs during ones lifetime, while the Will governs ones affairs and the distribution of their assets after death.

The **Durable Power of Attorney for Property** authorizes another person to serve as agent for the Principal (i.e., the person signing the Power of Attorney) to make decisions and take actions concerning the Principal's financial matters, including, but not limited to, selling and/or collecting assets, investing assets, managing and selling real and personal property, paying bills and otherwise managing bank accounts, borrowing money, entering into contracts, filing tax returns and making gifts on the Principal's behalf from the Principal's funds. The terms of your Durable Power of Attorney for Property will require the determination and declaration in writing of your incapacity or incompetence (as determined by two licensed physicians) in order for it to become operative. A Durable Power of Attorney for Property does not authorize the agent to make any decisions concerning the Principal's health care.

A **Living Will or Advance Medical Directive** directs family members and physicians to withhold or withdraw life-sustaining procedures (such as ventilators and respirators, etc.) and permit the Declarant (i.e., the person signing the Living Will) to die in the event the Declarant should be in any one or more of the following conditions: (1) the last stages of a terminal and incurable condition; (2) a persistent vegetative state; and/or (3) a coma with no reasonable expectation of regaining consciousness. The Declarant must expressly indicate on the Living Will which of these conditions to which the Declarant wants the Living Will to apply. In addition, the Declarant also can direct that nutrition and hydration be withdrawn in the event of the occurrence of one or more of the applicable conditions.

The **Durable Power of Attorney for Health Care** is broader than a Living Will and supersedes the Living Will as long as an agent authorized to act under the Health Care Power is alive, competent and willing to act. I normally suggest that both a Living Will and a Durable Power of Attorney for Health Care be executed so that, in the event the agent named in the Durable Power of Attorney for Health Care is unable or unwilling to serve, the Living Will will provide direction should the Declarant/Principal be in a condition addressed by the Living Will. The statute that recognizes the validity of Durable Powers of Attorney for Health Care suggests that the Principal select one of three options concerning the powers he/she grants to his/her agent. These options

include instructions (1) not to prolong the Principal's life, not to provide life-sustaining treatment, including nutrients and fluids, and not to provide death-delaying treatment if the agent believes the burdens of any such treatment outweigh the expected benefits, (2) to prolong the Principal's life and provide life-sustaining or death-delaying treatment unless the Principal is in an irreversible coma, or (3) to prolong the Principal's life to the greatest extent possible without regard to the Principal's condition, the chances of the Principal's recovery or the cost of the procedures. As long as you are able to make your own health care decisions, the agent appointed under the Health Care Power cannot make a health care decision on your behalf that is contrary to your decision.