

# Estate Planning 101



*Presented by:*

Freedom Law Services  
25 Town Center Blvd. Suite  
204  
Crestview Hills, KY 41017  
**(859) 344-6742**  
[www.freedomlawservices.com](http://www.freedomlawservices.com)

# Freedom Law Services

Melanie M. Chenot, Paralegal and Office Manager

Michael K. Ruberg, Esq.

Eric S. Beutel, Esq.

Matthew R. Broering, Esq.



(859) 344-6742  
[www.freedomlawservices.com](http://www.freedomlawservices.com)

# What estate planning considerations might this modern family have?



**Blended family**

**Immigration**

**Adopted Child**

**2<sup>nd</sup> Marriage**

**Children of previous marriages**

**Tax Issues**

**College planning**

**Aging Parents**

**Grandchildren**

# Things to Ponder



- Do you have a Will or estate planning documents?
- How can you make things easier for those you leave behind?
- If you have a Will or estate planning documents, when is the last time you have actually laid your eyes on them?
- Who will make decisions for you in the event you cannot?

# Most Common Estate Planning Documents



- Last Will and Testament
- Living Will / Advance Directive
- MOST Form
- Power of Attorney (Springing or Durable)
- HIPAA Release
- Trusts

# Key Terms



- Estate – your personal property and real estate
- Testator – the person making the Will
- Heir – a person who shall legally inherit your estate or part of it
- Intestate/Intestacy – when a person does not have a Will
- Probate – the process of legally dispensing your estate with the Court



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# Key Terms

- Beneficiary – different than an heir – i.e., life insurance policies
- Witness – person who signs and attests to document
- Codicil – a legal document that supplements a Last Will
- Advanced Directive – often used as a term for a Living Will
- Incompetent – not able to make sound medical decisions

# Living Will/Advance Directive

- A **written** document that allows you to ***express your intentions*** regarding ***life-sustaining measures***
- Does not give anyone authority to speak for you if you are able to do so yourself
- Document defined by various statutes; differs state to state
- Witnessed or Notarized



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# Living Will

- Allows you to leave instructions in four critical areas

1. Designate a Health Care Surrogate

1. Refuse or request life prolonging treatment

1. Refuse or request artificial feeding or hydration

1. Express your wishes regarding organ donation



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# Living Will Execution Issues In The Hospital



- Can either be Notarized or Witnessed
- If it is witnessed, the following people cannot be a witness:

1. A blood relative or beneficiary
2. An employee of a health care facility where the declarant is a patient
3. An attending physician; or
4. Any person financially responsible for the grantor's health care

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HIPAA PERMITS DISCLOSURE OF MOST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY			
<b>MOST</b> <b>Medical Orders for Scope of Treatment</b>		Patient's Last Name: _____  Patient's First Name, Middle Initial: _____	Effective Date of Form: _____  Form must be reviewed at least annually Patient's Date of Birth: _____
This document is based on this person's medical condition and wishes. Any section not completed indicates a preference for full treatment for that section.			
<b>Section A</b> Check One Box Only	<b>CARDIOPULMONARY RESUSCITATION (CPR): PERSON HAS NO PULSE AND IS NOT BREATHING.</b> <input type="checkbox"/> Attempt Resuscitation (CPR) <input type="checkbox"/> Do Not Attempt Resuscitation When in cardiopulmonary arrest, follow orders in B, C, and D.		
<b>Section B</b>  Check One Box Only	<b>MEDICAL INTERVENTIONS: PERSON HAS PULSE OR IS BREATHING.</b> <input type="checkbox"/> Full Scope of Treatment: Use intubation, advanced airway interventions, mechanical ventilation, defibrillation or cardioversion as indicated, medical treatment, IV fluids, and provide comfort measures. <u>Transfer to a hospital if indicated.</u> Includes intensive care. Treatment Plan: Full treatment including life support measures. <input type="checkbox"/> Limited Additional Intervention: Use medical treatment, oral and IV medications, IV fluids, cardiac monitoring as indicated, non-invasive bi-level positive airway pressure, a bag valve mask, and comfort measures. Do not use intubation or mechanical ventilation. <u>Transfer to hospital if indicated.</u> Avoid intensive care. Treatment Plan: Provide basic medical treatments. <input type="checkbox"/> Comfort Measures: Keep clean, warm and dry. Use medication by any route. Positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <u>Do not transfer to hospital unless comfort needs cannot be met in the patient's current location (e.g. hip fracture).</u> Other Instructions: _____		
<b>Section C</b>  Check One Box Only	<b>ANTIBIOTICS</b> <input type="checkbox"/> Antibiotics if indicated for the purpose of maintaining life <input type="checkbox"/> Determine use or limitation of antibiotics when infection occurs. <input type="checkbox"/> Use of antibiotics to relieve pain and discomfort. <input type="checkbox"/> No Antibiotics (use other measures to relieve symptoms). Other instructions: _____		
<b>Section D</b>  Check One Box Only in Each Column	<b>MEDICALLY ADMINISTERED FLUIDS AND NUTRITION:</b> the provision of nutrition and fluids, even if medically administered, is a basic human right and authorization to deny or withdraw shall be limited to the patient, the surrogate in accordance with KRS 311.629, or the responsible party in accordance with KRS 311.631. <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Long term IV fluids if indicated  <input type="checkbox"/> IV fluids for a defined trial period. Goal: _____  <input type="checkbox"/> No IV fluids (provide other measures to ensure comfort)             </div> <div> <input type="checkbox"/> Long term feeding tube if indicated  <input type="checkbox"/> Feeding tube for a defined trial period. Goal: _____  <input type="checkbox"/> No feeding tube             </div> </div> Special instructions: _____		
<b>Section E</b>  Check The Appropriate Box  Directions were given: <input type="checkbox"/> Orally <input type="checkbox"/> Written	<div style="display: flex;"> <div style="width: 30%;"> <b>Patient Preferences as a Basis for This MOST Form:</b>             Basis for order must be documented in medical record.             </div> <div style="width: 70%;"> <input type="checkbox"/> Adult Patient with decisional capacity  <input type="checkbox"/> Parent/guardian of minor patient  <input type="checkbox"/> Surrogate per advance directive  <input type="checkbox"/> Judicially appointed guardian/durable power of attorney with power to make health care decisions  <input type="checkbox"/> Patient does not have an advance medical directive such as a living will or health care power of attorney.  <input type="checkbox"/> Patient has an advance medical directive such as a living will or health care power of attorney in place. I certify this form is in accordance with the decisions in the current advance medical directive.             </div> </div> Name: _____ Position: _____ Signature: _____		
I agree that adequate information has been provided and significant thought has been given to decisions outlined in this form. Treatment preferences have been expressed to the physician (MD/DO). This document reflects those treatment preferences and indicates informed consent. If signed by a patient, surrogate or responsible party, preferences expressed must reflect patient's wishes as best understood by that surrogate or responsible party. You are not required to sign this form to receive treatment.			
Patient, Surrogate or Responsible Party: _____		Signature: _____	
Health Care Professional Preparing Form: Print Name _____		Relationship: _____	
Physician Signature _____		Preferred Phone #: _____	Date Prepared: _____
Physician (Print Name) _____		Physician Contact Number _____	
<b>SEND FORM WITH PATIENT/RESIDENT WHEN TRANSFERRED OR DISCHARGED</b>			

- The MOST form is always voluntary and is usually for persons with advanced illness. MOST records your wishes for medical treatment in your current state of health. The provision of nutrition and fluids, even if medically administered, is a basic human right and authorization to deny or withdraw shall be limited to the patient, the surrogate in accordance with KRS 311.629, or the responsible party in accordance with KRS 311.631. Once initial medical treatment is begun and the risks and benefits of further therapy are clear, your treatment wishes may change. Your medical care and this form can be changed to reflect your new wishes at any time. However, no form can address all the medical treatment decisions that may need to be made. An advance directive, such as the Kentucky Health Care Power of Attorney, is recommended for all capable adults, regardless of their health status. An advance directive allows you to document in detail your future health care instructions or name a surrogate to speak for you if you are unable to speak for yourself, or both. If there are conflicting directions between an enforceable living will and a MOST form, the provisions of the living will shall prevail.

## COMPLETING MOST

- MOST must be reviewed, prepared and signed by the patient's physician in personal communication with the patient, the patient's surrogate or responsible party.
- MOST must be reviewed and contain the original signature of the patient's physician to be valid. **Be sure to document the basis in the progress notes of the medical record.** Mode of communication (e.g., in person, by telephone, etc.) should also be documented.
- The signature of the patient, surrogate or a responsible party is required; however, if the patient's surrogate or a responsible party is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's surrogate or a responsible party must be signed by the patient's physician and placed in the medical record.
- Use of original form is required. **Be sure to send the original form with the patient.**
- There is **no requirement that a patient have a MOST.**

- If a health care provider or facility cannot comply with the orders due to policy or personal ethics, the provider or facility must arrange for transfer of the patient to another provider or facility.

This MOST must be reviewed at least annually or earlier if:

- The patient is admitted and/or discharged from a health care facility;
- There is a substantial change in the patient's health status; or
- The patient's treatment preferences change.
- If MOST is revised or becomes invalid, draw a line through sections A – E and write "VOID" in large letters.

This MOST may be revoked by the patient, the surrogate or the responsible party.

Review Date	Reviewer and Location of Review	MD/DO Signature (Required)	Signature of Patient, Surrogate or Responsible Party (Required)	Outcome of Review, describing the outcome in each row by selecting one of the following:
				<input type="checkbox"/> No Change <input type="checkbox"/> FORM VOIDED, new form completed <input type="checkbox"/> FORM VOIDED, no new form
				<input type="checkbox"/> No Change <input type="checkbox"/> FORM VOIDED, new form completed <input type="checkbox"/> FORM VOIDED, no new form

**SEND FORM WITH PATIENT/RESIDENT WHEN TRANSFERRED OR DISCHARGED**



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# Power of Attorney

- A **written document** that allows you to name **someone to act** on your behalf (Agent/Attorney-in-fact)
- Broad or limited powers – should include HIPAA release
- Agent can sell, invest, and spend your assets
- Two types:
  - 1. Durable – effective immediately, ends upon death
  - 2. Springing – goes into effect when incapacitated or other stipulated event
- Provides immediate access to critical assets
- Allows agent to talk to banks, attorneys, and others



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# Power of Attorney

- Clarifies decisions and intent in advance
- Provides immediate access to critical assets
- Protects agent from financial abuse claims
- Allows agent to talk to banks, attorneys, and others
- There are statutory requirements easily missed without an attorney

# Last Will and Testament



- A will is a **written instrument** that indicates the **intent** of a **testator** regarding disposition of their **estate** after death
- Your house, personal belongings, car, bank accounts, and other assets make up your estate
  - **Some assets \*do not\* pass via your will, even if you want them to**
- A will tells a liquidator (executor) how to handle your estate
- If no there is no Will, the state has its own rules (Intestate Distribution)
- **BEWARE OF ONLINE WILL PROVIDERS!!!**
  - **They often do not meet state requirements**

# 5 Important Features Of Wills



1. Can make specific gifts of property i.e., jewelry, knife collection, family heirlooms
1. If properly executed, Courts and other states must recognize your legal wishes
1. Gifts to charity or churches
1. Avoid expensive and time-consuming court proceedings
1. Inheritance tax benefits and/or avoidance

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# Trusts

- A trust is like a “shell” company, but for your own personal assets
- Trusts can provide anonymity
- Skips probate and avoids costs and time of probate
  - Avg. probate time ~ 1 year
- A Trust has a purpose - set it up for a specific goal i.e. education, housing etc.
- A Trust has designated beneficiaries
- Often created for underage beneficiaries, college 529 savings plans, and charities

# Freedom Law Services

Estate Planning &  
Probate  
Specialists

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25 Town Center Blvd., Suite 204

Crestview Hills, KY 41017

Questions?

