



MARC J. SOSS, ESQUIRE
(941) 928-0310
www.fl-estateplanning.com

FLORIDA ESTATE PLANNING -THE BASIC ESTATE PLANNING DOCUMENTS YOU NEED

LAST WILL & TESTAMENT:

A Last Will and Testament (Will) serves several purposes: (i) it sets forth to whom and in what manner you want your assets to pass to your heirs (spouse, children, grandchildren, nieces, nephews, etc.) or other beneficiaries (friends, not-for-profit and charitable organizations) upon death; (ii) provides you the opportunity to designate a guardian for your minor child or children if you have no surviving spouse; and (iii) appoints the individual(s) whom you desire to serve as the “Personal Representative (pay your creditors, file final tax return, distribute your assets to your beneficiaries) for your estate. Without a Will, the state of Florida will statutorily determine to whom your assets will pass and who will serve as the Personal Representative (administrator or executor) of your estate.

Question: Do I need a Will if all of my assets are jointly titled with another individual (spouse, parent, child, family member)?

Answer: Everybody needs a Will. No one knows when they are going to die and which joint owner will pass away first. Having a Will allows you to determine, if you are the surviving joint owner, to whom the assets will pass at your death.

Question: Do I need a Will if I own only minimal assets?

Answer: Absolutely Yes. Having a Will allows you to appoint the individual to dispose of your personal items and tie up loose ends (deal with creditors, retitle an asset, file your final income tax return, etc.).

POWER OF ATTORNEY:

Written instructions in which you designate another individual (the “attorney-in-fact” or “agent”) to make financial decisions on your behalf. The document is typically utilized in the event that you: (i) are rendered incapable of making your own financial decisions; (ii) are unavailable; or (iii) require assistance. The powers granted to the attorney-in-fact may be limited to a particular event (real estate transaction) or be overly broad (cover everything). The attorney-in-fact’s powers may: (i) take effect immediately or upon the occurrence of a future event (springing power); and (ii) be temporary or permanent authority to act on your behalf.

Question: What are the benefits of having a Power of Attorney?

Answer: The biggest benefit is convenience. Other benefits include (i) allowing another party to handle the purchase or sale of assets (automobile, real estate, stocks and bonds, open or close a bank account) on your behalf; and (ii) preparation for situations when you may not be able to act on your own behalf (due to absence, illness, travel or incapacity).

Question: What happens if I do not have one?

Answer: If you become unable to manage your personal or business affairs, it may become necessary for a court to appoint one or more individuals (guardian or conservator) to act on your behalf.

Question: Who should be my agent?

Answer: It is recommended that you select a family member (spouse, child, parent, etc.) to act on your behalf. A successor agent should be listed in case the nominated agent is unavailable or unable to act when the time comes.

Question: Will my Power of Attorney expire?

Answer: A "durable" Power of Attorney will remain valid until your death or its revocation. A "limited" Power of Attorney can contain a termination date or event.

HEALTH CARE DIRECTIVE:

Written instructions that set forth what health care decisions should be taken on your behalf in the event you are unable to make (due to illness or incapacity). The document appoints the individual ("health care surrogate") to make all necessary medical decisions in the event you are unable to express your preferences.

Question: Why should I have a Health Care Directive?

Answer: It is a legal document that allows you to express your preferences concerning your medical treatment and appoint a surrogate to insure your preferences are followed. Physicians will utilize the document as a written expression from you as to your medical care preferences and designation of the individual they should consult concerning unanswered medical questions.

Question: What if I change my mind as to whom I desire to be my surrogate?

Answer: You can simply destroy the document and create a new one listing the new surrogate.

Question: To whom should I provide a copy of the document?

Answer: You should provide a copy to all of the following individuals: (i) physician (general and specialists); and (ii) surrogate designated to act on your behalf.

LIVING WILL:

Written instructions which allow you to determine how you want to be treated in certain medical conditions (be given life-sustaining treatments in the event you are terminally ill or injured or provided food and water via intravenous devices). The document may also appoint an individual to make decisions on your behalf if you are unable to do so. "Life-sustaining treatment" means the use of available medical machinery and techniques, such as heart-lung machines, ventilators, and other medical equipment and techniques that will sustain and possibly extend your life, but which will not by themselves cure your condition. In addition to terminal illness or injury situations, most states permit you to express your preferences as to treatment using life-sustaining equipment and/or tube feeding for medical conditions that leave you permanently unconscious and without detectable brain activity.

Question: Under what circumstances is a Living Will utilized?

Answer: A Living Will is utilized when the decision to use life-sustaining treatments may prolong your life for a limited period of time and not obtaining such treatment would result in your death.

Question: Under what circumstances is a Living Will not utilized?

Answer: A Living Will is not utilized to determine your medical treatment in situations that do not affect your continued life (routine medical treatment and non life-threatening medical conditions).

PERSONAL PROPERTY MEMO:

This memorandum, which must be signed and dated, identifies how you desire your personal property (jewelry, antiques, art, etc ...) distributed to specific individuals. In order to avoid any confusion and/or conflict it is recommended that you attach a photo identifying the specific item to be distributed under its terms.