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## **THE ESTATE PLANNING DOCUMENTS EVERY FLORIDA RESIDENT SHOULD POSSESS AND WHY**

### **Last Will & Testament:**

A Last Will and Testament (“Will”) sets forth the manner in which you desire for your assets (only those titled in your name alone and without a designated beneficiary upon death) to pass to your heirs (spouse, children, grandchildren, nieces, nephews, etc.) or other beneficiaries upon death. The document appoints the Personal Representative (individual(s) or entity whom you desire to administer your estate) pay creditor claims, file final tax return, distribute your assets to your beneficiaries your estate upon death. Without a Will, Florida will statutorily determine to whom your assets will pass and who will serve as the Personal Representative (administrator or executor) of your estate.

If you also create a Revocable Trust, the sole goal of the probate proceedings will be to distribute your probate assets (only those titled in your name alone and without a designated beneficiary upon death) to pass to your Revocable Trust for ultimate distribution.

## **Revocable Trust:**

A Revocable Living Trust is a trust document created by an individual(s) that can be changed over time, utilized to avoid probate and to protect the privacy of the trust owner and beneficiaries of the trust. If you own real property in multiple states it should be an essential part of your estate plan.

A Revocable Trust will provide how property is managed for your benefit during your lifetime and incapacity. In most cases, you, as the Grantor, retain certain rights over the trust during which include the right to instruct the trustee to distribute all or any portion of the trust property, as you desire, the right to change or revoke the trust at any time, the right to make discretionary distributions of income and principal to the Grantor and, sometimes, to the Grantor's family, if the grantor becomes incapable of managing his or her own affairs.

It should be funded with all assets you own, including Florida real estate, valuable possessions, bank accounts and investments. The trust instrument determines where your assets and funds are expended during your lifetime, during incapacity and at death.

## **Power of Attorney:**

This document designates the individual(s) (your "financial 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 agent may be limited to a particular activity (real estate transaction) or be overly broad (cover everything). It is important to note that the agent's powers take effect immediately upon their appointment. This document should not be shared with anyone until needed.

## **Health Care Surrogate Directive:**

This document designates the individual(s) (your "health care agent") to make health care decisions on your behalf in the event you are unable to

make health care decisions on your own or are unable to express your preferences. This may include medication(s), surgery, or the placement on a device to increase your quality of life. It does not allow the health care agent to make end of life decisions.

### **Living Will:**

This document designates the individual(s) (your "agent") to make end-of-life decisions on your behalf in the event you are unable to make them on your own or are unable to express your preferences. The document also provides written instructions on how you want to be treated in certain medical conditions (given life-sustaining treatments in the event you are terminally ill or injured or provided food and water via intravenous devices). "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.

### **Pre-Need Guardian:**

A Pre-Need Guardianship designation permits an individual to select who they would like to take care of themselves if they ever become incapacitated. The designation can list multiple people in the order of preference, before a guardian is needed. This document should almost never be required when you have in place a valid Power-of-Attorney and Health Care Surrogate.

# QUESTIONS & ANSWERS

## **Last Will & Testament:**

**Question:** Why do I need a Will?

**Answer:** A Will provides for the distribution of your property at the time of your death in the manner selected by you (subject to the laws of some states that prevent disinheritance of a spouse and, in some cases, children). Without a Will, your state of residence will determine to whom your estate will be distributed (it may not be the individuals you would have selected).

**Question:** Benefits to having a Will?

**Answer:** Having a Will allows you to: (i) designate a guardian for your minor child or children if you have no surviving spouse; (ii) designate the administrator of your estate and eliminate the need for a bond; (iii) provide for an individual (parent, stepchild, niece / nephew, godchild, etc.) who would not otherwise inherit under your state's statutory guidelines; and (iv) provide for bequests to not-for-profit and charitable organizations.

**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.)

**Question:** What is the role of a Personal Representative?

**Answer:** A personal representative (executor or executrix) is an individual or entity you select to be in charge of settling your estate after your death. They are responsible to collect your assets, file final tax returns, pay outstanding credit claims, and ultimately distribute your assets to the beneficiaries you have selected.

## **Revocable Trust:**

**Question:** What are the pro's of having a revocable trust?

**Answer:** Creating a revocable trust is probably the best way to ensure that your property remains available to be used for your benefit, should you become physically or mentally incapable of managing your own affairs. While continuity of management is also possible when a durable power of attorney is signed, third parties such as banks, brokers and transfer agents often have more difficulty in dealing with a power of attorney than with a trust agreement. The avoidance of probate is often cited as one of the primary benefits of a revocable trust. Assets in a revocable trust at the grantor's death are available to raise cash to pay estate taxes, administration expenses and debts immediately after death, without waiting for a probate decree or issuance of preliminary letters.

**Question:** What are the con's of having a revocable trust?

**Answer:** The need to retitle assets and fund it prior to death.

## **Power of Attorney:**

**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.) or someone trustworthy 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 Surrogate Directive:**

**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:**

**Question:** Under what circumstances is a Living Will utilized?

**Answer:** A Living Will is utilized in situations where 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).

## **Pre-Need Guardian**

**Question:** Why do I need a pre-need guardian designation if I have a Power-of-Attorney and Health Care Surrogate in place?

**Answer:** The simple answer is that you should not need to designate a pre-need guardian when you already have a valid Power-of-Attorney and Health Care Surrogate in place. Unfortunately, it is not uncommon for Florida court's to refuse to honor them and relatives, friends, or even nursing homes to try and get around your Power-of-Attorney and Health Care Surrogate take advantage of or attempt to exploit you. This document advises the Judge whom you desire to serve as your guardian should one be required.