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**WHY EVERYONE NEEDS A WILL AND THE FOUR OTHER
ESSENTIAL ESTATE PLANNING DOCUMENTS**

by: Jessica H. Miller

WHY IS ESTATE PLANNING IMPORTANT AND A GIFT TO MY FAMILY AND LOVED-ONES?

Estate Planning is one of the most important things any person can do as it allows you to decide what happens with your property and guardianship of children once you pass, to make health care and end-of-life decisions before you become unable to do so due to a medical crisis, and to appoint people you trust to handle your financial affairs and health care decisions should your health fail causing you to be unable to manage these matters. Estate planning is a gift to your family and loved-ones as it simplifies the many difficult decisions and jobs they must handle if you become seriously ill or pass away during a time that is already quite stressful and difficult for them. However, Estate Planning only works if it is set up before you pass away or are incapacitated, and it is designed specifically to make sure your wishes are honored and your family does not have to deal with unnecessary bureaucratic red-tape if you become seriously ill or pass, which can often be costly, time-consuming, and stressful.

WHAT HAPPENS IF I PASS AWAY WITHOUT LEAVING A WILL?

In Colorado, if you pass away without leaving a will, your final wishes about your property, children's guardians and personal affects will not be implemented. Instead the State of Colorado, its laws, and a judge will determine who receives your property and who cares for your children.

WHO RECEIVES MY PROPERTY UPON MY DEATH IF I DO NOT LEAVE A WILL?

If you pass away without a Will—also called intestate—the State of Colorado will distribute your property to your heirs based on Colorado law. Generally, in Colorado, the distribution of property from an intestate estate is distributed to the deceased's closest heirs as defined by Colorado law. Rather than you determining how your property will be distributed, the State of Colorado will utilize its own hierarchy to determine who is entitled to your property, which can be particularly problematic for unmarried couples. Leaving the administration of your estate to the rules of intestacy may result in additional uncertainties and inconveniences for your surviving loved ones. Through good Estate Planning, your property will be distributed according to your wishes with a minimum amount of income, estate, and inheritance taxes incurred as well as minimizing attorney fees and court costs. Depending on your situation, your Estate Planning may be designed to avoid probate, which is a court process to distribute your property that can be a lengthy, complicated and costly.

WHO WILL BE THE GUARDIAN OF MY CHILDREN IF I PASS AWAY WITHOUT A WILL?

This question obviously depends on if the child has a surviving parent. In the event there is no surviving parent, a Colorado judge applying the laws of the State of Colorado will decide who becomes the child's guardian. A will allows you to designate a guardian you trust to care for your child should something happen.

WHO NEEDS A POWER OF ATTORNEY FOR HEALTH CARE?

Anyone who wants to ensure that a particular loved-one or other chosen person makes decisions about your health care and end-of-life choices based upon your wishes in the event you become incapacitated. Without a Power of Attorney for Health Care, Living Will and/or some other legal document expressing your wishes if you become incapacitated and are unable to make medical decisions for yourself, the law authorizes “interested persons” to select a decision maker for the patient. Since an “interested persons” can be a spouse, parents, adult children, siblings, grandchildren, or close friend, the lack of clarity in the law can result in major conflict when your wishes are not known and specified, when your loved ones are unable to reach a consensus about who should get to make decisions on your behalf, and may even result in having a court case filed to have the Court select and appoint you a guardian to make these decisions.

WHY DO I ALSO NEED A POWER OF ATTORNEY?

A General Power of Attorney is different from a Power Attorney for Health Care (“DPOAHC”) in that a DPOAHC only provides the power to act on your behalf for health care issues. A General Power of Attorney, however, allows others to essentially legally act in your place on any type of business, property, legal, or financial matter in the event you become incapacitated. In the event of any serious medical problems or incapacity, a General Power of Attorney would allow a person chosen by you that you trust to conduct your financial affairs and look after your interests. Without a General Power of Attorney, it is likely that a court proceeding will be necessary to appoint a conservator to make legal and financial decisions for you. A General Power of Attorney can be designed to be limited to only allow a person to undertake certain, specified acts or can allow another to do nearly everything you could do yourself—and this is a choice you can make before you become incapacitated. A Power of Attorney can also be limited in duration or durable (permanent).

WHAT IS THE DIFFERENCE BETWEEN A LIVING WILL AND A POWER OF ATTORNEY FOR HEALTH CARE?

A Living Will is a document where you specifically state how you want your health care and end-of-life decisions handled should you become seriously incapacitated and are unable to make your own medical conditions for any reason, whether it be physical incapacitation or your are deemed mentally unfit to make your own decisions by a doctor or judge. A Power of Attorney for Health Care is a document where you appoint a person to make health care and end-of-life decisions for you should you become seriously incapacitated to the point where you are unable to make your own decisions. In most cases, we recommend our clients to utilize both of these documents (and both are part of our standard Estate Planning package) as they can work harmoniously and the Living Will helps guide your appointed health care proxy to make difficult decisions about your care and end-of-life that reflect your own wishes. We regularly help our clients decide which approach and documents work best for their wishes and circumstances.

CAN I MAKE DECISIONS IN ADVANCE ABOUT WHAT HAPPENS WITH MY LAST REMAINS?

Yes! As part of a complete Estate Planning package, you can decide in advance on issues like burial, cremation, funeral services, memorials, remembrances, and obituaries so that your loved ones do not have to deal with more difficult decisions during an already tough time after your passing and to ensure that your wishes upon your death are known and implemented.

DO I NEED TO UPDATE A WILL I MADE MANY YEARS AGO?

The simple answer—it depends. If you have had significant life changes—such as the birth of a child, a marriage or divorce, the death of someone named in your estate documents, or a significant change of financial circumstances—you should create a new will or amend a prior will. If you wish to change the people you have named in a prior will or other estate documents, you should also consider whether you need a new version or an amendment. If you only have a will and no other estate documents, such as a Living Will, a Power of Attorney for Health Care or a General Power of Attorney, you also should

consider adding these important documents as a will alone leaves many estate issues, financial issues, health care issues and end-of-life decisions unresolved.

FURTHER ASSISTANCE

If you have further questions concerning wills or estate planning, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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