Legal Documents: A Guide for the Perplexed

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Ramsey County Library, Roseville, MN
Thursday, March 21, 2019
Learning Objectives

• Understand *who* needs to plan and *why*

• Determine *what* essential legal documents you and your parents need in your toolkit

• Acquire strategies for long-term care planning and *how to* best utilize resources

• Identify life changes that may impact planning and *when* a plan requires updates
Who Needs to Plan?

1. Are you over the age of 18?
2. Do you have a taxable estate?
3. Do you have a loved one with special needs?
4. Do you have real property in more than one state?
5. Did you recently get married or divorced?
Who Needs to Plan?

6. Do you want to give money to charities?
7. Do you have children from a prior marriage?
8. Will your family members agree on your end of life care?
9. Do your beneficiary designations match your estate planning goals?
10. Do you have a diagnosis that may require long-term care?
Two sure things in life…

• Planning is not:
  • About where your money goes when you die
• Planning is:
  • About how you want to live while you are alive
• Planning includes:
  • Establishing the right legal documents and
  • Discussing them with your loved ones
Priorities When Planning

• Make Decisions Early
• Create Your Team
• *Plan for the worst, so you can live your best!*
Health Care Directive

- Health Care Directive | “The Artist Formerly Known As…”
  - Advanced Directive
  - Living Will
  - Power of Attorney for Health Care
Why is a Health Care Directive Important?

- Protects autonomy
- Appoints legal decision-maker
- Serves as guide for care providers
• If no Health Care Directive?
  • No clear path
  • Default treatment
  • Guardianship
POLST

• Providers Orders for Life Sustaining Treatment | POLST
  • End of Life Decision Making
  • Doctor’s Order
  • Emergency Responders
  • Relationship between POLST & HCD
The “Talk”
Powers of Attorney

- Powers of Attorney (POA)
  - Statutory Short Form Power of Attorney (SSFPOA)
  - Common Law or General Durable POA
- Grants powers to handle financial transactions
- Appoints an Attorney-in-Fact
- Valid ONLY until death
STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT
NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on
behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and
understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice
to the principal.

PRINCIPAL. (Name and Address of Person Granting the Power)


ATTORNEY(S)-IN-FACT
(Name and Address)


SUCCESSOR ATTORNEY(S)-IN-FACT
(Optional) To act if any named
attorney-in-fact dies, resigns, or is otherwise
unable to serve.

(Name and Address)
First Successor
Second Successor

NOTICE: If more than one attorney-in-fact is
designated to act at the same time, make a check
or "x" on the line in front of one of the following
statements:

___ Each attorney-in-fact may
    independently exercise the powers granted.

___ All attorneys-in-fact must jointly
    exercise the powers granted.

EXPIRATION DATE (Optional)
Use Specific Month  Day  Year Only

Powers of Attorney
Powers of Attorney

• Statutory Short Form Powers of Attorney:
  • Names Attorney(s)-in-Fact
  • Effective when signed
  • Some limitations
  • Revocable
  • Gifting powers limited
  • Easy to recognize
Powers of Attorney

- Common Law | General Durable Power of Attorney:
  - Customized by attorney for client’s specific situation
  - May provided for expanded powers
  - May remove limitations on gifting
  - May be more difficult to utilize
Powers of Attorney

• If no Power of Attorney?
  • No insurance financial transactions can be completed on your behalf
  • Conservatorship may be required
  • Greater risk of fraud and exploitation
• Purpose?
  • To designate where assets pass upon death
  • Appoint someone authority to administer your estate
• How do assets pass upon death?
  • Joint Ownership
  • Beneficiary Designations
  • Statutes of Intestacy (without a Will or Living Trust)
  • Will in existence
  • Trusts in existence
• What is probate?!
  • Probate Assets (Decedent’s Name Alone)
    • Triggers may include real estate or $75,000+
  • Non-Probate Assets
    • Joint Owner
    • Beneficiary, Transfer on Death, Payable on Death
    • Trust
Transfer on Death Deed

Used for Real Property (Homestead | cabin)

Owners name beneficiaries

Must be recorded prior to death

Effective upon death of Owners
## Wills

<table>
<thead>
<tr>
<th>PROS</th>
<th>CONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ease of Establishment</td>
<td>Requires a Probate Administration</td>
</tr>
<tr>
<td>Simplicity During Life</td>
<td>Loss of Privacy</td>
</tr>
<tr>
<td>Certainty for Beneficiaries and Others</td>
<td>May be More Expensive for Heirs</td>
</tr>
</tbody>
</table>
Trusts

- Special Needs Trust
- Testamentary Trust
- Revocable Trust
- Irrevocable Trust
- Intervivos Living Trust
## Revocable Trusts

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**PROS**
- Maintains Privacy
- Could Avoid Probate
- Includes Incapacity Planning

**CONS**
- Cost to Establish and Administer
- May or May Not Save Taxes
- Requires Vigilance
How to Prepare?

• Identify your Team or Key Players
• Consider your Values and Legacy
• Meet with an Attorney
• Execute Documents
• Have “the Talk”
• Review Annually
Get Organized

- Create a One-Stop Shop
  - Health Care Directive
  - HIPAA Release Form
  - Doctor Contact Information
  - Current Medication List
  - Clinic Notes
  - Appointment Schedules
Get Organized

• Create a One-Stop Shop Continued
  • Health insurance information
  • Other insurance information (home, auto, life, long)
  • Asset detail list
  • Identify sources of income (gross vs. net)
  • Financial statements
  • Online account access information
  • Tax filings
Life Changes ("The Five D’s")
- Diagnosis
- Decline
- Death
- Divorce
- Decade...
Update Regularly

• Values/Other Changes
  • Retirement
  • Moves
  • Receipt of Inheritance
  • Desire to Gift
  • Children/Grandchildren/Great Grandchildren
Thank You!

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