ESTATE PLANNING DOCUMENTS

RIGHT TO LIFE OF MICHIGAN

office of gift planning

CONTENTS

For your convenience, the Right to Life of Michigan Office of Gift Planning has compiled information about the different types of estate planning documents all in one booklet.

Wills

A will Is a legal document that provides specific instructions to the probate court judge concerning how and to whom your assets should be distributed after your death.

EVERYONE NEEDS A WILL...

- A will ensures your control over the distribution of your hard-earned assets at the time of death.
- A will allows you to name the person you want to settle the affairs of your estate.
- A will enables you to name legal guardians and conservators for your minor children.
- A will lets you decide how your children will receive their inheritance.
- A will can make provisions for your stepchildren and others outside of the family.
- A will allows you to prearrange charitable gifts.
- A will allows you to name a funeral representative to make funeral and burial decisions.

A WILL... Is a legal document that provides specific instructions to the probate court judge concerning how and to whom your assets should be distributed after your death.

Allows you the opportunity to name the person(s) you've chosen to manage and carry out the distribution of the assets in your estate.

Gives you the ability to select guardians and conservators for your minor children, should you and your spouse both be deceased.

NO WILL MEANS... You'll have no control over your probate estate or who will care for your minor children.

The state will use a standard formula to determine how, when and to whom your assets will be distributed.

The probate court judge will determine who will serve as guardian and conservator of your minor children, without any input from you.

PROBATE... Is a court procedure for the administration and distribution of the assets of your estate.

Is not avoidable if you have a will; rather a will defines your instructions for the court concerning assets and the guardianship and conservatorship of minor children.

Appoints a guardian(s) and conservator(s) for your minor children if you do not have a will.

A PERSONAL REPRESENTATIVE…
Is the individual or organization named in your will to carry out your wishes.

Was once known as the executor or executrix of the estate.

A GUARDIAN… Is the individual or family member you have named to care for and raise your minor children, if your spouse and you are deceased.

A CONSERVATOR… Is the individual or organization you name to act as the custodian of your minor child's assets.

Can also be named personal representative, guardian, or trustee (if you create a testamentary trust or revocable living trust).

CHILDREN… Receive their full inheritance at 18 years of age if you die without a will (the average inheritance is spent within six months).

Receive their inheritance according to your wishes if you have a will. When a testamentary or living trust is added to your will, you then have the option of giving them their inheritance over a period of years, rather than all at once upon your death. This choice allows you to provide for their needs (living, educational, medical, etc.) without giving them full control of their inheritance until they reach the age of maturity.

GIVING TO A CHARITY IN YOUR WILL… Is a wonderful way to help the charitable organizations you've supported during your lifetime.

Enables you to make a more significant gift than you could probably afford to make during your lifetime.

Allows you the opportunity to teach stewardship of God's gifts to your family and friends.

Allows the organizations named to continue the work you believe in.

JOINT OWNERSHIP… Is often used as a substitute for a will.

Can be used to transfer title of an asset without probate.

Can place assets at risk if the joint owner declares bankruptcy, refuses to sell, is involved in a lawsuit or divorce, or decides to assert control over the asset.

Is ineffective if the joint owner dies first.

Lacks some of the benefits in a will, such as naming a guardian and conservator for minor children.

Makes the joint owner a full-beneficiary of the asset, with no obligation to divide the proceeds with other beneficiaries.

PREPARING A WILL… Through an experienced estate planning attorney will insure that all provisions of federal and state laws are included, thereby informing you of any tax consequences or legal options that may be available.

PERIODIC REVIEW OF YOUR WILL IS NECESSARY...

If you move to another state.

If your assets increase or decrease.

When you buy or sell any major asset.

When you desire to make any changes.

When new tax laws go into effect.

Living Trust

A living trust provides many of the same benefits as a will and is a legal entity that holds property for the benefit of another.

BENEFITS OF A LIVING TRUST...

- A living trust avoids much of the cost and time delays of probate.
- A living trust provides privacy.
- A living trust is less susceptible to challenge by dissatisfied heirs.
- A living trust allows for the continuity of family income and business ownership.
- A living trust is more flexible than a will for moving to another state.
- A living trust, in conjunction with other estate planning, can reduce or eliminate federal estate taxes.

A LIVING TRUST... Is often referred to as a revocable living trust (RLT), meaning the trust may be revoked (canceled) or amended anytime during your lifetime.

Manages your assets during your lifetime, facilitates an effective distribution of your estate after death, and can avoid probate in most cases.

Can eliminate unnecessary court costs, attorney and county inventory fees by avoiding probate.

Can avoid time delays associated with probate, allowing for ease in the distribution of assets to family members and charitable organizations.

Is the legal document which can perform many of the same functions as a will.

Allows for the transfer of your personal assets during your lifetime, thereby making the document effective prior to death.

Can dramatically reduce or eliminate federal estate taxes in some estates.

THE GRANTOR IS... Also referred to as the settlor, or the donor, trustor, or the trustmaker.

A legal title referring to the person(s) setting up the trust.

THE TRUSTEE IS... The person(s) or organization selected to manage the assets of the trust.

Often times the grantor (the person setting up the trust) is also the initial trustee.

The successor trustee is the person who would take over as manager of the assets in the event the initial trustee could not serve due to incapacity or death.

PROBATE... Is the process by which a probate judge grants legal title to assets owned by a deceased person.

Is avoidable when all assets have transferred legal ownership to the trust.

Is unavoidable in some circumstances.

TRUST ASSETS... May be retained by the grantor.

Can be added or removed as they are sold or exchanged.

FUNDING THE TRUST... Means transferring assets to the trust.

Is essential if the plan is to avoid probate.

Is necessary if immediate distribution to beneficiaries is intended.

A POUR-OVER-WILL... Is a separate legal document that supplements a RLT.

Assures that assets not previously included in the trust are included for distribution through the trust.

Names the guardian and conservator for your minor children.

COSTS... Are higher to set up a RLT with a pour-over-will, than for a simple will.

Vary depending on the complexity and size of your estate.

Are normally offset by the avoidance of administration and legal expenses of probate, the benefit from immediate settlement of the estate upon death, and in some cases, federal estate tax savings to the beneficiaries.

LEGAL COUNSEL... Is absolutely necessary and important in drafting the trust.

Should understand your goals and wishes.

Should be experienced in drafting RLT's, pour-over-wills, and in trust funding.

Powers of Attorney

A power of attorney is a signed legal document in which you name a person to serve as your agent to handle personal and business affairs.

POWERS OF ATTORNEY...

- A power of attorney is a signed legal document in which you name a person to serve as your agent to handle personal and business affairs.

- A power of attorney defines the role of principal (you) as the person who owns the assets, and the agent as the person authorized by you to make decisions on your behalf.

- A power of attorney can authorize your agent to sign checks, make bank deposits, pay bills, sell property, handle insurance and legal claims, file tax returns and anything else relating to your financial affairs.

- A power of attorney is invalid if you become incompetent, unless it is drafted as a durable power of attorney.

POWERS OF ATTORNEY... Most people choose to add these two important Powers of Attorney to their estate plans:

Durable Power of Attorney (DPOA): A DPOA is a legal mechanism which allows you to appoint a person (agent/advocate) to handle personal, financial or business affairs on your behalf.

Durable Power of Attorney for Health Care (DPOA-HC): A DPOA-HC is a legal mechanism which allows you to appoint a person (agent/patient advocate) to make health care decisions for you should you become unable to do so.

DURABLE POWER OF ATTORNEY...

Specifically allows your agent to handle your personal and business affairs if you become incompetent or unavailable.

Must be signed prior to your incompetency.

AN AGENT'S AUTHORITY... May begin the day you sign the document naming your agent or only in the event you become incompetent.

REVOKING AN AGENT'S AUTHORITY... Is possible if you are competent and the directive is given in writing.

Is also possible if you are not competent. Anyone interested in your welfare can ask for probate court intervention. The court will appoint a conservator who can require your agent to account and report. If necessary, the DPOA will be suspended or revoked. You or your conservator can then recover damages.

YOUR AGENT… Should have your complete confidence and trust to act on your behalf.

Should have the ability and expertise to conduct your financial affairs.

May be your spouse, relative, friend or financial institution.

May be unwilling or unable to serve, so it is wise to name at least one alternative.

Can be two or more persons serving together, acting independently or jointly.

Must follow your instructions and act in your best interest (not the agent's or personal interest).

Must keep accurate records and accounts and act prudently.

Is legally responsible to you for any damages from improper handling of your affairs.

YOUR ATTORNEY… Has the experience to prepare a DPOA.

Can include language to assist your agent with government agencies on your behalf (Social Security Administration, Veteran's Administration or IRS).

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE… Goes into effect only if you are "unable to participate in medical treatment decisions."

May also be called a Patient Advocate Designation Form or Durable Power of Attorney for Health Care.

Is a separate document from a general Durable Power of Attorney.

Is not a document insurance companies, hospitals, nursing homes or other health care providers require as a conditions to receiving services.

Is a document that federal law requires hospitals and nursing homes to offer patients.
Provides you with the opportunity to select your patient advocate.

Allow you an opportunity to give your agent personal instructions concerning medical treatment (your preferences under various circumstances of your medical condition).

CHANGING OR REVOKING MY DPOA-HC… Is easy to do and can be done for any reason.

May be necessary if there are changes in your health, or if there is a change with your patient advocate.

Should be reflected on existing copies provided to other parties.

YOUR TEAM CONSISTS OF… Your patient advocate who needs to understand your wishes and have a copy of your DPOA-HC.

Your physician who, when possible, needs to understand your wishes and have a copy of your DPOA-HC.

Your family who will know where to find your DPOA-HC and provide a copy to your patient advocate and your physician, if necessary.
Your prolife attorney who understands your desires and has experience preparing DPOA-HC's.

Right to Life of Michigan who can provide a DPOA-HC form with prolife language, detailed explanations and instructions for signing.

YOUR PATIENT ADVOCATE… May be anyone you choose who is 18 years or older.

Should be a person who has your full confidence to make serious medical decisions for you, and is willing to accept the important responsibilities you've asked them to perform.

Will be the only person directing your care at any given time. They may, however, consult with family members, clergy, or medical professionals in making their decisions.

A LIVING WILL… Is not legally binding in Michigan.

Is not necessary if you have a DPOA-HC which sets forth your wishes.

Is significantly different than a DPOA-HC since it is simply a written statement of your wishes to be interpreted by someone else.

Does not make provisions for problems that arise when family members disagree with each other, or with the treating physician on how to interpret your wishes.

May require the intervention of the probate court judge to determine your intentions.

FOR MORE INFORMATION

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Information in this publication is for the purpose of providing general answers to commonly asked questions. Please contact an attorney for specific legal advice.

Right to Life of Michigan
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