



Estate Planning Documents

There are six or so basic estate planning documents that each individual should consider in formulating a successful estate plan: the last will and testament, the revocable living trust, the durable power of attorney, the designation of healthcare surrogate, the living will and the declaration of pre-need guardian. A simple explanation of each of these documents is set forth below.

The Last Will and Testament: A Will is a set of written instructions designating a Personal Representative (also known as an Executor/trix) to manage a person's estate and designates the people or organizations that will receive certain property and assets. It is through a process called Probate that the property would be re-titled and settled. A Will is similar to an instruction manual, in that it guides the Probate process. Probate can also include those who pass away without a Will having been created, otherwise known as Intestate. If no Will has been written, the estate could fall to unwanted heirs at law since no guidance for disposition has been left. There is also the potential for additional expenses involved in this route. Certain assets such as IRAs, 401ks, annuities, Life Insurance Policies, and some retirement plans are not included in Wills. Keep in mind a Will does not provide for incremental gifting and also does not protect estates subject to the Federal Estate Tax. Probate is required, however, if there are potential creditors of the estate.

The Revocable Living Trust: Unlike a Will, a Revocable Living Trust (RLT) is in effect during your lifetime and allows you to transfer assets. Since the transfer is made by the trust agreement the assets do not go through the Probate process. The RLT appoints those designated to act on your behalf, includes disability planning, instructions regarding settling the estate and distributing the trust estate to named beneficiaries. Settlers are allowed to act as trustee and beneficiary of the trust property during their lifetime. It is considered a powerful tool to keep your estate plan a private family matter.

The Durable Power of Attorney: A Durable Power of Attorney (DPA) allows a designated person (an "Agent") to make financial and legal decisions on behalf of the maker. The DPA survives the incapacity of the maker. Even in the event of dementia, stroke, heart attack, coma, Alzheimer's disease or the like, the DPA remains. Once the document is executed, a loved one would legally be able to access many assets in your name alone or sell an asset with your name on it. According to Florida law, the designated agent is permitted to access your financial information and accounts with the use of a DPA. If you have a DPA drafted prior to October 2011 it should be reviewed by an attorney. A DPA is not generally used to make health care decisions.

The Designation of Health Care Surrogate: A Designation of Health Care Surrogate (DHCS) allows you to nominate a person to make health care decisions on your behalf in case you become incapacitated. If an individual is unable to give informed consent due to incapacity, the hospital or doctor will look at the DHCS to make decisions on behalf of the incapacitated individual. Florida Statutes provides a pecking order of proxies, who can make your decisions for you if you do not have a DHCS. Please keep in mind that the usage of proxies can cause unnecessary tension and may not even be what you intended for. One source of tension is that if a proxy consists of multiple individuals then it must be a majority agreement for a decision to be made.

The Living Will: A Living Will creates a baseline document that indicates the maker's wishes regarding their end of life care. It provides guidance to the maker's designated representatives on how to best follow through on the final decisions regarding the healthcare. Florida Statutes have been recently amended to carry new conditions in addition to the standard "terminal condition", such as "end stage condition" and "persistent vegetative" state. Before a living will can be utilized, two physicians must certify in writing that the maker of the document is unlikely to recover.

The Declaration of Pre-Need Guardian: A Declaration of Pre-Need Guardian allows you to designate a guardian of the person (healthcare matters) and a guardian of the property (legal and financial matters), when and if necessary, due to incapacity. This designation, the pre-need guardian, allows the court to know the maker's wishes as the choice of guardian and creates a legal presumption in favor of that person. Remember, a guardianship removes a person's Constitutional Rights. It is the MOST restrictive means possible of caring for someone. Guardians have education, financial and tax requirements needing to be submitted as well as being present for any legal proceedings, discuss with an Elder law attorney for specificity.

Each of the above documents has a special form, certain language and witness requirements (including a notarization for some). Consult with an elder law attorney for the preparation of the documents. Additionally, if you are from out-of-state, please consult with a Florida elder law attorney to make sure your documents are valid in Florida.

Other Non-Legal Documents: The documents below are generated by your physician and are not drafted by an attorney.

Do Not Resuscitate Order (DNRO): is a medical order written by a doctor. It instructs health care providers not to do cardiopulmonary resuscitation (CPR) if breathing stops or if the heart stops beating. It does not affect other treatments, such as pain medicine, medicines, or nutrition.

Do Not Hospitalize Order (DNH): This document is a written order indicating that a patient with a terminal illness chooses not to be admitted to a hospital. This is usually done with patients of hospice.

Please be advised that these descriptions have been simplified for educational value to the general public. This list is not exhaustive and alternative, hybrid, and complex other estate planning documents are available to meet the specific financial and healthcare needs of individual. For a more in-depth look at estate planning, please visit our web site at www.slonimlaw.com.