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# ESTATE PLANNING: CREATING YOUR LEGAL TOOL KIT

It is helpful to think about estate planning as the process of creating your personal legal tool kit. Just like having a wrench, shovel, and hammer prepare you for the expected and unexpected events of home ownership, having the right documents in your legal toolkit prepare you and your loved ones for life's anticipated and unanticipated events. Unless you are very wealthy, the tools you need are not complicated. Having these tools in place will ease your mind, allow the people you trust to help you if you become very sick or injured, and ease the process of handling your final affairs for your loved ones.

My goal is to make the estate planning process understandable and to help you create your own legal tool kit. Let's begin with a description of each of the essential legal tools below.

### **1. Durable Power of Attorney**

A Durable Power of Attorney is a legal document in which you appoint a person you trust completely to take care of your day-to-day finances and other business. The person you appoint as your Durable Power of Attorney (DPOA) is legally authorized to step into your shoes and handle your banking, pay your bills, deal with your health insurance company, file your taxes, and communicate with the government about benefits you receive such as Medicare, Medicaid, or Veterans Administration. If you change your mind about giving someone your Durable Power of Attorney, you can revoke it at any time. The appointment of your Durable Power of Attorney ends at your death.

Why is it essential? If you become sick or seriously injured and cannot manage your personal business, your DPOA can handle your essential personal financial, insurance, and other business interests. If you do not have a DPOA in place, your bank may not allow anyone to access your funds to pay your bills, insurance companies may refuse to talk to anyone but you, and your taxes may go unfiled.

What makes it "durable"? A durable power of attorney stays in effect even if you lose the mental capacity to revoke it. In contrast, a regular power of attorney becomes ineffective if you lose your mental capacity. Having a durable power of attorney anticipates that there is often a time between an incapacitating final illness or accident and a person's death and avoids creating a gap in which there is no person who can handle your business.

### **2. Advance Directives**

Advance directives are a type of legal documents in which you provide instructions for how you want health care to be provided to you in the future. There are two types of Advance Directives:

- a. **Durable Power of Attorney for Health Care:** A document that designates who will make health decisions for you if you lose your ability make those decisions. This document is also called a Medical Power of Attorney or a Healthcare Proxy.

A Durable Power of Attorney for Health Care is a document in which you identify someone you trust to make medical decisions for you if you cannot.

Unless you specify differently, the person you identify as your Durable Power of Attorney for Health Care will only have the authority to make decisions for you while you lack capacity.

Your Durable Power of Attorney for Health has the same rights as you would to your medical records and your medical providers.

- b. **Living Will:** A document that provide instructions regarding what health care you want to be provided or withheld, if you lose your ability to make those decisions. This document is also called a Health Care Directive.

A Living Will is a legal document in which you specify what end-of-life medical treatments you want and do not want. If you become seriously ill or injured and cannot communicate for yourself, your medical care providers and your family can turn to your Living Will for guidance.

\*Arkansas law allows citizens to combine Medical Power of Attorney and Health Care Directives into one document, often referred to as an Advance Health Care Directive.

### 3. Will

A Will is a legal document that instructs the court on how to disburse your assets after you die. You can choose someone to as serve as your executor. An executor's job is to make sure that your instructions are carried out. Your executor will submit your Will to the court to be probated after you die. Probate is the process in which a Judge makes sure the submitted Will is valid, that all of the deceased person's property has been inventoried and appraised properly, and that the property has been distributed to the right people.

If you are a parent, you can nominate a trusted person to be appointed as guardian for your minor children in your Will.

### 4. Trust

A Trust is legal document in which you create a "container" to hold your money and property. In the trust document you designate who will serve as the trustee to manage the assets in the trusts. Also in your trust document, you will designate how the assets in the trust will be used, name the beneficiary (or beneficiaries) who will benefit from the assets, and who will receive trust property when the trust ends. There are different kinds of trusts including: testamentary trusts that are created after a person's death according to the instructions in the person's Will; living trusts in which the person creating the trust also serves as the first trustee to manage the trust assets while specifying another person to serve as a "successor trustee" when the trust creator is no longer able; and irrevocable trusts which are trusts that cannot be changed once created.

Having the right legal tools in your tool kit will prepare you and your family for the future and give you peace of mind. Please contact me if you have questions or would like to begin creating your legal tool kit.