

Proper Legal Documents

Health Care Proxy

A legal document in which you authorize another individual to serve as health care agent and to make informed health care related decisions on your behalf in the event that you are unable to do so.

Durable Power of Attorney

A legal document in which you select an individual to act as your "Attorney-in-fact," authorizing that person to make legal and financial decisions on your behalf.

Will(s)

A legal document stating a person's intention for the settlement of his or her estate with regard to naming a personal representative (formally known as "executor"), paying final debts and disbursing any remaining assets to selected individuals. A Will is "probated" and must be presented to the Probate Court unless all assets have been disbursed previous to death or after death under the terms of a trust, a beneficiary designation (such as IRA's, life insurance) or assets passed by operation of law, such as joint ownership with rights of survivorship.

Deed(s) with Retained Life Estate

Transfer of actual ownership of any real estate to another individual or individuals while retaining/keeping the legal right to use (or live in) the real estate for the remainder of a person's life. The advantages of this type of deed, is that upon death of the original owner/life estate tenant, the new owner/remaindermen has unlimited use and ownership of the real estate without having to go through the probate process. Furthermore, for Medicaid purposes, the transfer is deemed a gift and thus after the corresponding penalty period is over, a person would be qualified for Medicaid benefits and the real estate would be protected. Lastly, this type of Deed has capital gain advantages versus a straight transfer or deed without having retained a life estate.

Trust(s)

There are various forms of Trusts depending on the goals and needs of the person(s) ie. Donor(s) creating the Trust. Examples are as follows:

Real Estate Trust: Real estate is transferred to a Realty Trust. Upon the death of the Donor, the Trust names the person(s) owning the real estate and typically is passed to such person(s) without restriction and without the need of a Probate Court.

Family Trust: Assets such as savings accounts, stock, mutual funds, can be owned by a Family Trust. Accordingly, upon the death of the Donor, as with the real estate in a Realty Trust, the liquid asset(s) are passed to the person or people named without the need of a Probate Court. Typically, both the Realty Trust and Family Trust are "revocable", meaning the Donor can change the person(s) named as beneficiary at any time for any reason as well as revoke and/or amend the trust in whole or in part, as opposed to an "irrevocable" trust, which cannot be changed, revoked or amended. Only specific types of irrevocable trusts are protected against the cost of long term care once the five year "look back" period has passed.

Spendthrift Trust: A Trust implemented to manage assets for an individual who is not capable of handling their own financial affairs. This type of trust is usually funded at death.

Minor Trust: Assets are held in a Minor Trust for the benefit of a minor until the minor attains a specific age or ages as designated by the Donor. For example, a grandfather leaves \$100,000 in a minor trust for his 13 year old grandson. The Trustee (person responsible for "holding" the funds) is obligated under the Trust to disperse 50% of the trust property upon the minor's 25th birthday and 50% upon the minor's 30th birthday. The age of distribution may be tailored to the Donor's desire.

Estate Tax Minimization Trust: Married individuals with significant asset levels and estates could create marital trusts to benefit from their spousal exemptions and therefore minimize or even eliminate any estate "inheritance" taxes.

Supplemental Needs Trust: Should an individual be receiving governmental assistance, an inheritance gift could disqualify that individual from any assistance. The Supplemental Needs Trust is designed so that the individual shall continue to receive the governmental benefits and the trust assets would be used to "supplement" any further needs the individual may have.

Medi-Will with Testamentary Trust: A variation of the typical will and trusts previously discussed. These documents are specifically designed for a healthy spouse who has an ill spouse and wishes to protect assets from being directly inherited by the ill spouse who is potentially facing or currently receiving long term care.