

Estate Planning Documents Explained

By Grand Master Bryant Webster

A WILL - is a document by which you express what you want to happen to your worldly possessions: tangible personal property - automobiles, furniture, dishes, jewelry, guns, coin collections, etc.; real property - land, houses and buildings; and residuary - basically everything else (and can include all the above), but specifically money in the bank, stocks and bonds not beneficiary designated, and any other property. You designate an Executor to handle your affairs at the time of your death, and you can name a Trustee to handle any trusts set up in the will. You can also nominate a person to be guardian of any of your minor children. A formal will is executed by a person over 18, who is not incompetent, before two witnesses and a notary. A will becomes effective when probated after death.

A DURABLE GENERAL POWER OF ATTORNEY - is a document by which you can name a person as your "Attorney in Fact" - like having an agent or employee, who can handle your business decisions for you. It takes no power away from you, but gives you an additional person who can do anything with your property, money, bank accounts, safe deposit boxes, and taxes, etc. that you can do. It can prevent you from needing a guardian in the event you become incompetent or incapacitated. It is valid once signed before a Notary Public, and remains valid until you die or revoke it. It is automatically revoked by your death. Most financial institutions and any real property transfers require that the power of attorney be recorded in the office of the Register of Deeds.

A HEALTH CARE POWER OF ATTORNEY - is a document by which you can name a person as your "Health Care Agent" to make medical decisions for you when your doctor (whoever is treating you at the time) determines that you cannot make medical decisions for yourself. This can be temporary - as if you hit your head and are unconscious, or it can be permanent - as if you have Alzheimers or Dementia. Your Health Care Agent can talk to your doctors, get your medical records, get you care or refuse or withhold care. You can make certain decisions about end of life scenarios in a Health Care Power of Attorney, such as to discontinue extraordinary measures, or to employ extraordinary measures, or you can specify that those decisions are left up to your Health Care Agent. You can

give your Health Care Agent authority to deal with your body, donate organs, release your remains to a mortuary, etc. A Health Care Power of Attorney is valid once signed before two witnesses not related to you or employed by any of your health care providers, and a Notary Public, and remains valid until you die or revoke it.

A TRUST - can be created in a Will for the benefit of minor children or any person who would be assisted by having the benefits of money or property without having the ability to manage or control that money or property directly. A TRUST can be created during life, and can be changed during life, and can provide privacy at death, so that the recipients and amounts of your estate gifts are not known to the public. A TRUST can also be helpful if you have real property in more than one state.

These brief descriptions are for general information only, and should not be construed as legal advice. You should seek the assistance of your own legal counsel in crafting the documents you need to deal with your specific situation.