

FOUNDATIONAL ESTATE PLANNING DOCUMENTS

Estate planning is best defined as a comprehensive “set of instructions” that: will allow a client to maintain control during their lifetime; provide for their care during disability; and to protect their beneficiaries after passing. This “set of instructions” is your estate plan and the “individuals” who will care for you are your Personal Representatives, your Healthcare Agents, and your Attorney in Fact. The individuals that will care for your minor children are the Trustees, the Guardian, and perhaps the Conservator.

Last Wills & Testaments

Whether you utilize a Revocable Trust or a Will-based plan, your Last Will and Testament plays a vital role in your estate plan. In the trust-based plan your Will acts as a safety net to “pour” any assets that remain in your name at passing, into your trust. In a Will-based plan, your Will serves as the main transfer document, indicating where and to whom assets should pass.

In either case, when we are dealing with young families the Will is where clients designate Guardians, Conservators and Trustees for any minor children. The Guardian would have control of the minor child’s “person”, making decisions related to their health, and education. A Trustee would be nominated to oversee any trust create with inside the Will. If needed, a Conservator would oversee a minor’s child’s monetary assets that are not held in Trust.

Healthcare Proxy

A Health Care Proxy is the emergency medical document which will allow the person you nominate, the “Agent”, to make medical decisions, if you are unable. In Massachusetts, the Health Care Proxy is the rough equivalent of a Living Will, and will allow your Agent to make medical decision during your incapacity.

Accompanying a Healthcare Proxy, we strongly recommend that clients execute two additional documents. The first of these documents is the “Advanced Directives”. This document allows you to indicate treatment choices in a number of situations. For example, if you were in a coma, the directives ask whether you would like treatments such as mechanical breathing, blood transfusions, and artificial nutrition and hydration. These “charts” help guide your Health Care Agent and are particularly helpful to the successor Agents with whom you may never had had this level of conversation.

The second supporting document is the Health Insurance Portability and Accountability Act (HIPAA) release. This is a document that relates to federal law and is rather straight forward. This release allows the people identified to access your medical records when and if they are serving as your Health Care Proxy. Without this document your healthcare agent could be prohibited from reviewing your medical records.

Power of Attorney

A Power of Attorney allows for financial decisions to be made during incapacity. The person nominated, the Attorney-in-Fact, is given authority to “sign your name” and take other actions on your behalf. Whether you utilize a Revocable Trust or Will-based plan, your Power of Attorney needs to be updated every few years.

Even when a Revocable Trust is employed, there are assets that will remain outside the trust such as IRA’s, 401K’s and Life Insurance policies. A Power of Attorney that was put into effect more than four or five years ago could be viewed as “stale” in the eyes of many financial institutions. Financial institutions would be weary of a Power of Attorney that is of this vintage. By having a Power of Attorney that is not active until the disability occurs, i.e. a springing power, and by re-executing the document every few years these problems can be avoided.