



Welcome to our presentation on
Essential Estate Planning Documents for
Everyone

Essential Estate Planning Documents

- Durable General Power of Attorney
- Digital Diary
- Health Care Power of Attorney and Advance Directive/Living Will
- Last Will and Testament

How Do I Select Someone to Help Me?

It can be difficult to find someone you feel comfortable with and trust to help you in the roles we will talk about today.

- For financial matters (e.g., financial powers of attorney, Wills, trusts): Friends and professionals (e.g., attorneys, accountants, brokers) generally are options.
- Regarding health care matters (e.g., health care powers of attorney): Less likely a professional would be available in an emergency. Specifically for health care, an Aging Life Care Manager would be willing to serve.

Durable General Power of Attorney/ Financial

- If you become ill or incapacitated, or even if you're just away from home for an extended period of time, you need someone who is empowered to handle your business affairs, pay bills, and manage your assets.
- Some people want a financial power of attorney just for convenience, to be used even when healthy.

Power of Attorney – A Vital

A Durable Financial Power of Attorney empowers an agent you appoint to: **TOOL**

- Handle your money and property. Choosing a bank/trust company or attorney to serve as your Financial POA be aware fees/costs would further reduce what beneficiaries inherit
- Manage real estate, banking, investments, retirement funds or even life insurance, etc.
- Protect assets (estate tax planning, Medicaid planning)
- Handle all insurance
- Pay your taxes
- Apply for Medicaid/other entitlements

The Danger of Being Unprepared

- When there is no appointed agent, NO ONE can represent you or have access to your assets if they are solely owned by you.
- Court is the only solution, and a Court Appointed Guardian (may or may not be someone you know) will be assigned to manage the legal, financial and personal affairs.
- The Guardianship process is expensive, intrusive and wastes time as needs remain unmet

Digital Estate Planning

- A new tool.
Name an agent for your digital assets as part of your POA
- Protecting your “cyber” life and documents.
- Who will have access to your electronic assets?
- Who will control or remove your internet footprint?
- How will your family get your family photos on your computer without your password?
- **Digital Diary**, lists your electronic information for your POA.

Health Care Power of Attorney/Living Will/ Advance Directive

- This document names a health care agent who can make health care/medical decisions for you if you become unable, or no longer desire, to make such decisions for yourself.
- It's vital to execute these documents (or one document, if they are combined) while you're still healthy, mentally and physically.

Health Care POA and Advance Directive/Living Will

- Appoints an agent as a medical decision-maker in the event of disability. Choose someone (personally known or professionally known) who can help you with your health care decisions.
- Can spring into action when you are unable to make your own health care decisions or can be effective immediately.
- **HIPAA** Release Form – Allows your agent to access your medical records.

Health Care Decisions

- In this document, you state your instructions and/or recommendations concerning your health care.
- You can also include instructions and/or recommendations for certain post-death matters (e.g., bodily donation, burial, cremation, etc.).

Health Care Decisions

- Most commonly used for end of life with no hope of recovery, but also when you are unable to make your own health care decisions but do not have an end-of-life diagnosis.
- Describes various health care choices and your intentions about options.
- Addresses use of artificial or mechanical means in end-of-life diagnosis circumstances.
- MOLST form Maryland Medical Orders for Life-Sustaining Treatment

MOLST

- Maryland **MOLST** (marylandmolst.org) is a portable and enduring medical order **form** covering options for cardiopulmonary resuscitation and other life-sustaining treatments.
- Serves as a single document to streamline health care professionals' review of a patient's directions and preferences regarding: Resuscitation instructions when the patient has no pulse and/or is not breathing. Instructions for intubation and mechanical ventilation when the patient has a pulse and the patient is breathing. Treatment guidelines.
- It is not an **advance directive** because it is a medical document that contains actionable medical orders that are effective immediately based on a patient's current medical condition. The Physician should fill out a MOLST to match your advance directive, which has your directions and preferences. **ONLY certain health care professionals, NOT patients, sign MOLSTs.**
- Persons of any age (including children) with advanced illnesses or who plan to stay at a care community indefinitely, who want to express their preferences about life-sustaining medical treatments
- No **expiration** date is indicated on the **form** (no **expiration** date is required), the **MOLST form does not expire**. Will the MD **MOLST form** be honored in other states? The **MOLST** instructions may be honored in some states, but not in others. A growing number of states have their own versions of a **MOLST**.

Advance Directive v. MOLST

- Advance Directives and MOLST are documents that contain information about the health care you want in case you are unable to speak for yourself while at the hospital or receiving medical care. **They are two very different documents.**
- An **Advance Directive** can contain your health care instructions or recommendations, organ donation requests, plans to donate your body to science and the name of a person (agent) you choose to make health decisions for you if you are not capable in the future.
- **MOLST** is a form that helps health care professionals swiftly review what you want for CPR and other life-sustaining treatments specific to your then-current condition. To be valid, a MOLST form must be signed and dated by a licensed Maryland medical provider – a physician, nurse practitioner or physician's assistant.
- Maryland Medical Protocols for **EMS Providers** do not follow **advance directives** and thus you need the MOLST form's DNR order completed (or become an authorized wearer of a Medic Alert bracelet/necklace) if you do not want CPR.

4 Categories of Assets at Death

Generally speaking, what a person owns in the U.S. at death is in 1 or more of these 4 categories:

Non-Probate

(1) What a deceased person jointly-owned with another person or people (as tenants by the entirety or joint tenants with rights of survivorship) who were still living as of when the person died. The surviving joint-owner(s) continue owning.

(2) What a deceased person owned as sole owner (or last living owner) but on which the person designated one or more Payable-on-Death/Transfer-on-Death ("POD/TOD") beneficiaries (common for retirement accounts and life insurance, but can really be almost anything the person wants, such as POD/TOD beneficiaries directly in banks or brokers' systems on accounts or stock or even a POD/TOD beneficiary on a car title in the MVA's system);

(3) What a deceased person actually retitled to a "living" or "inter vivos" Trust before the person's death (e.g., a deed for real estate, written confirmation of titling from financial institutions).

Probate

(4) Assets to which a deceased person's "Will" (also known as "last will and testament") applies. In other words, what to which none of the first three categories apply.

What is a Will?

- A Will (aka “Last Will and Testament”) is a legal document that designates how certain of your assets (generally, Category #4 assets: those on which you are the LAST LIVING owner and DO NOT have a payable-on-death/transfer-on-death beneficiary designated at land records, bank, life insurance company or other financial institution, etc.) will be distributed.
- A Will also can be used to designate a guardian for a disabled or minor child of the person who made the Will.
- States generally have “reciprocity” laws, meaning if Will valid in state where made, then new state also will honor it
 - But that does not necessarily solve all; should still meet with attorney in new state to discuss specific laws.

Important Issues in Making a Will

- In Maryland, the original of Will should be safekept at your Register of Wills.
- You also can leave assets to organizations, charities, etc., not just people; and you can make trusts INSIDE your Will for minors, disabled or immature people.
- Spouses and “registered domestic partners” have certain rights to inherit from deceased spouse/partner (Spouses have more rights than “registered domestic partners”); simply living apart at death DOES NOT change rights that apply.
- However, children generally do not have an absolute right to inherit via a Will.
- Wills are administered by a Personal Representative through probate

What Happens When There is No Will

- The estate may be delayed (e.g., while Court determines who should serve).
- The assets are distributed strictly by State law, which might not be what the deceased person wanted - “Law of Intestacy”.
 - If you say you have no one that State law could give what you have if you don’t do planning, and just rely on Law of Intestacy: Everyone has a cousin.
 - But remember that the Law of Intestacy Only Applies to Category 4 Assets
- Legal and administrative costs could increase.

Special/Supplemental Needs Trusts

- If you have a loved one who you want to help, but the loved one is disabled, then a “Special Needs Trust” (aka “Supplemental Needs Trust”) might be needed.
- Most commonly used when the loved one is receiving “means-tested benefits” (often Medical Assistance (aka “Medicaid”) health insurance and Supplemental Security Income (aka “SSI”), to preserve those “means-tested benefits”. Otherwise, those benefits could end.
- Normally this kind of trust can be made inside your Will (i.e., as a testamentary supplemental needs trust, that comes into existence after you pass.)

Plan Successfully

- Be Prepared
- Prepare Now
- Achieve Your Goals, as Much as Reasonably Possible
- Communicate Thoroughly with a Trusted Person in your Life (or at least tell where your important documents are located/can be obtained)

Do you have any QUESTIONS?

Byrd and Byrd LLC is a law firm
able to assist you with your MD and DC Estate Planning



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