



Estate Planning for the Terminally Ill (and everyone else)

***** none of the information on this handout constitutes legal advice; please take this information and meet with a qualified lawyer in your state to have your specific questions addressed *****

General thoughts:

- People often wait too long to get their estate planning done.
- If you wait too long, physically getting to the office to do the paperwork can be really hard, as well as cognitive issues.
- Attorneys can be limited in addressing needs if there are cognitive issues.
- ***It's best to be in planning mode rather than in crisis mode.***
- It is likely that you will experience peace when you know it's settled and done.
- When people see someone else go through a serious health issue or death, that's when they see that they need to do some estate planning.
- ***If you have minor children, estate planning is much more important because provisions for the guardianship and support of minor children to avoid involvement of the Department of Children and Families and other government agencies.***

Key Terms: 1) Access; and 2) Authority.

BEFORE DEATH (a/k/a Living Wills)

1. Health Care Surrogate—this gives your proxy/surrogate not only HIPAA compliant access, but also allows your proxy/surrogate to make health care decisions on your behalf when you are still alive. This document is **durable**, meaning that it will still be effective after you have been incapacitated. **Caution:** every location/hospital/practice will have their own forms, but those forms will be limited and will only apply to individual surgeries or procedures or time periods. Important to share information with your proxy/surrogate and if you make any changes in the person you select, you must share that information in writing with who you delete and who you add. The authority in this document ends when you die.
2. Advanced Directives—these documents are fairly broad because you can't always anticipate every issue and may cover when a DNR should be executed by your doctor, but isn't the DNR itself. The authority in this document ends when you die.



3. Powers of Attorney (can be specific or broad)—you are establishing an agent to do something on your behalf. These documents are dependent on state law and can vary substantially by state. You need to be able to trust your agent implicitly. The authority in this document ends when you die.

AFTER DEATH

4. Last Will & Testament—at a basic level, this is your letter to the probate judge, telling him/her what to do with what you leave behind. Approximately 72% of Americans die without a will. Don't assume that your familial relationships will automatically play out the way you want them too—blended families cause some issues. Some terms that an account may have: 1) POD=payable on death; and 2) TOD=transfer on death. The reason you have a will is that once you are dead, there are many things out of your control and a will can communicate your wishes and govern the rules as to how the issues will be addressed.
5. Trust—this create a bucket that you can then fill up how you want; another metaphor is that it creates a company. You are the CEO of the company until you die and then the trust tells your family who is the subsequent CEO. The company doesn't go away just because the founding CEO is gone. The trust manages your money after your death and can function in a variety of ways to protect your heirs, especially minors, after your death.

Probate Court—authentication of a will (meaning to make sure the will is valid, which is different in each state) is the first step and then the Court will appoint an executor/personal representative/administrator to do the work of addressing the assets/debts as necessary. This is the place where your heirs get access to the assets/debts/details of the estate after death. A nuance – the beneficiary designation on an account will trump estate planning. If a person doesn't have estate planning, each state has their own specific laws to figure out heirs and next of kin.

Some terms discussed:

1. Before death – proxy/surrogate, established by the Health Care Surrogate documents.
2. Before death – agent, established by a Power of Attorney.
3. After death – Probate Court appoints an Executor, Personal Representative, or Administrator to do the business of the estate.



4. After death – Trust – Settler/Grantor=the one setting up the trust; Trustee/CEO=the person implanting the trust; Corporate Trustees are an option, but can be overly rigid and overly expensive; Beneficiaries=your heirs
5. If you are a veteran or have a veteran in your family, be sure that you have their discharge paperwork in order to easily access benefits since after the veteran has died, it is very difficult to obtain.

Consider organizing your assets/debts/things in a book like “I’m Dead, Now What.”
Consider utilizing the “Five Wishes” to organize your requests for end of life details.