

Commentary

The keys to estate planning

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Many people ask about wills, durable powers of attorney and living wills. What are these documents, and why are they important?

A *last will and testament* is a legal document that expresses the wishes of the writer, or testator, about who will inherit his assets upon death. It also names an executor who is responsible for administering the testator's estate. This includes obtaining the value of the testator's assets as of the date of death and paying all estate debts and taxes within certain time frames. The executor is then obliged to distribute the balance of the estate to all beneficiaries in the manner described in the will.

A testator should also establish a trust in the will if any individuals under 18 may inherit assets. The trustee is responsible for managing those assets for the benefit of the minor until he reaches 18 or any older age established by the testator. Finally, if the testator is the parent of minor children, the will should identify an adult who could serve as guardian for that child. This person should be someone who the testator believes shares his philosophy regarding child rearing.

It is important to realize that without a will, the state and not the testator will decide who

inherits and the amount of their share. In many instances, the resulting beneficiaries are not individuals who the testator would want to receive assets from his estate.

A *durable power of attorney* is different than a will. The maker of the power is known as the principal. The principal appoints an individual identified as an agent and authorizes the agent to act on his behalf regarding defined financial and personal matters during the principal's life. For example, the agent can be empowered to sell stock and real estate or purchase certificates of deposit in the name of the principal. A durable power of attorney takes effect regardless of the principal's mental condition.

Upon the principal's death the power is void, and the agent can no longer act on behalf of the principal. Rather, the executor of any last will and testament prepared during the principal's lifetime assumes responsibility for managing what are now the assets of the principal's estate.

A *living will or advance directive for health care* is a statement by its maker which names a health care representative or proxy who can make decisions on the patient's behalf if he becomes incapacitated and is unable to communicate with

medical providers. This document should include the patient's preferences regarding the type of life-sustaining measures which should be administered or withheld if he has an incurable or irreversible mental or physical condition with no reasonable expectation of recovery.

Some people may want all possible means taken to keep them alive, regardless of their condition. Other individuals may only authorize actions to relieve pain, with an instruction that artificially-provided fluids and nutrition and mechanical respiration be withheld if such treatment merely prolongs dying. The choice is yours, but it should be expressed clearly in a living will to avoid potential disputes among family members.

In conclusion, a will, durable power of attorney and living will address different situations, and each document should be considered an important part of any estate plan.

Nicholas Giuditta is an attorney in Cranford. He maintains a general practice with a focus on elder law, estate planning, probate and guardianship matters. To submit a guest commentary to the Cranford Chronicle and Record-Press, call editor Greg Marx at (732) 396-4219 or email union@njnpublishing.com.