



The Four Must-Have Estate Planning Instruments

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PRACTICE AREAS

Estate Planning

DEAR JONATHAN:

My husband died last year. While he was alive, we never engaged in any type of estate planning, and fortunately there were not any issues when he died. However, now that I am single, my children have convinced me to engage in the estate planning process. Before I meet with a lawyer, can you give me an overview of what types of documents I should consider implementing. Thank you.

JONATHAN SAYS:

The following is a summary of the types of estate planning documents all individuals should consider implementing regardless of their age, the size of their estate, or whether they are married or single:

LAST WILL AND TESTAMENT

A last will and testament, among other things, allows you to name who you want to receive your estate upon your death. If you don't have a will, then those assets that are titled in your name alone at death will pass according to state law. In other words, without a will, the state will control who receives your estate.

FINANCIAL AND HEALTH CARE POWER OF ATTORNEYS

A durable power of attorney allows you to appoint an agent to act on your behalf if you are unable to act for yourself. In the case of a financial durable power of attorney, your agent can manage your finances, pay your bills and manage your day to day affairs if you are unable to do so. A health care durable power of attorney allows you to name a patient advocate to make your personal and health care decisions for you if you are unable to do so. If you fail to have either one of these power of attorneys and you become disabled and can no



longer act for yourself, then a guardian or conservator will need to be appointed on your behalf, which will involve a court proceeding.

LIVING WILL

A living will or advance directive allows you to instruct in writing what type of medical treatment you wish to receive if you are terminally ill or in an irreversible coma or persistent vegetative state. For instance, you can advise your family and your physicians with this document whether you want to receive life sustaining treatment, i.e, be kept alive on life support, in either of those instances. Many times a living will is used in combination with a health care durable power of attorney.

LIVING TRUST

A trust is a legal contract entered into between the person who establishes the trust (settlor) and the person who manages the trust assets (trustee) on behalf of the trust beneficiaries. A living trust is a trust created by the settlor during his or her lifetime wherein he or she is typically the sole beneficiary of that trust. One of the main reasons people establish a living trust is so that their estate will not have to go through probate. Probate is the process which, among other things, provides for the distribution of assets that were titled in a decedent's name alone at the time of his or her death. Probate can be avoided for those assets which are retitled in the name of a person's living trust during that person's lifetime; any assets that are not retitled in the name of that living trust would have to be probated at that individual's death. Besides probate avoidance, there are many other reasons for setting up a living trust. For instance, if you want a particular beneficiary, such as a child, to receive a portion of your estate, but you don't want that child getting their entire share at the time of your death, you can direct the trustee to hold back that child's share or portion of that child's share for a period of time until that child is older or better suited to manage those assets.

There are other documents of course, that you may want to consider implementing depending upon your circumstances, however, the above-stated documents are the basic documents that any individual should consider implementing.

When you meet with the lawyer, you should be prepared to ask questions and discuss these documents in more detail. Good luck.