

# McCarty | Law LLP

## ESTATE PLANNING SUMMARY

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**Wills.** A will contains a person's, or **testator's**, intentions regarding the distribution of their assets upon death. When preparing a will, consider who you would want to fill the following roles:

- **Personal representative:** The PR, which used to be called an **executor**, is responsible for certain administrative tasks, such as taking an inventory of the deceased person's property, dispersing the property to the appropriate beneficiaries, and paying any outstanding bills.
- **Guardian:** Parents with minor children also need to select a guardian, or who they would like to have custody of their children if something should happen to them. The guardian is responsible for rearing the children, consenting to medical care and similar "parental" duties.
- **Trustee:** A **testamentary trust** is contained within a Will, and is overseen by the trustee, usually for the health, education and support of minor or disabled children, until they reach a specified age.

**Living Trusts.** A trust can also be created during lifetime to hold a person's assets. The goal of such a trust is typically to minimize estate taxes and/or avoid probate. While the client is usually the initial **trustee**, they still need to select a **successor trustee** to take over upon their incapacity or death.

**Marital Property Agreements.** Marital property agreements classify ownership of a married couple's assets. MPAs can be used to classify all of the assets owned by a couple as marital property, a special type of joint ownership reserved solely for married people which avoids probate and has capital gains tax advantages. Alternatively, MPAs may be used to classify the assets of the spouses as their individual property, such as in a prenuptial agreement, to keep the couple's assets segregated.

**Health Care Powers of Attorney\*.** A health care POA allows an individual to designate an **agent** to make health care decisions in the event he or she cannot. A health care POA is a "springing power", because it 'springs' to life only after two physicians, or a physician and a psychologist, nurse practitioner, or physician assistant, certify in writing that an individual is incapacitated, or unable to communicate his or her wishes regarding health care decisions. The designated agent is then authorized to make health care decisions on behalf of the incapacitated individual.

**Declaration to Physicians (otherwise known as a Living will)\*.** This describes the kind of life-sustaining care you would want **only** if you had a **terminal condition** or were in a **persistent vegetative state**. The declaration directs your physician whether to withhold or withdraw life-sustaining treatment or a feeding tube if you develop an illness or injury that cannot be cured and your death is imminent. This does not authorize anyone to make health care decisions on your behalf. Therefore, if you must later go to a nursing home, guardianship and protective placement proceeding may be required, which can be costly.

**Durable Power of Attorney\*.** A financial POA also allows an **agent** to make financial or administrative decisions on behalf of a person. Unlike health care, a financial POA is typically not a springing power. Once signed, a financial POA is immediately effective and the agent is authorized to perform financial or administrative tasks on behalf of the individual. If the person ever becomes incapacitated, the agent is still authorized to make decisions on his or her behalf (the POA *endures* the person's incapacity). Typically, a financial POA is used for convenience, such as an elderly couple authorizing their children to pay bills for them. That's why an agent is often referred to as a "gopher" – the agent has the authority to 'go for' this and 'go for' that.

**Authorization for Final Disposition.** This voluntary document allows you to designate someone to make funeral arrangements on your behalf and express your preferences for funeral services, burial and/or cremation.

\* FYI – Living Wills, Health care and durable powers of attorney all terminate at death.