

GET YOUR LEGAL AFFAIRS IN ORDER

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With summer fast approaching many families are scheduling vacations. As you are making your vacation plans it makes sense to establish or review your estate plan. Properly drawn estate planning documents can protect finances, both during life and after death. Establishing an estate plan can also save your family from paying Federal and New Jersey estate taxes. Regardless of age or financial status, everyone should have a Will, Living Will, and General Durable Power of Attorney. Let's briefly review the importance of each document.

A Will is a legal document that provides for the distribution of assets after death and names a person to settle the estate. Without a Will, individuals surrender their right to define how they want their estate settled and instead, allow their estates to be settled by rules established by the State of New Jersey. An even worse scenario occurs when a person has a poorly drafted Will that does not effectively carry out his or her wishes.

A Will is not a simple or generic document, but one that must be carefully developed to address an individual's needs and wishes. All individuals have different personal and financial backgrounds, which must be carefully examined in order for an estate plan to effectively carry out a person's wishes. Individuals may want to leave their assets in trust for beneficiaries. Trusts are often established to reduce estate taxes, preserve control and keeps assets within your bloodlines.

The second important estate planning document for an individual is a General Durable Power of Attorney (hereinafter referred to as "POA"). A POA is important if you become incapacitated because it allows a designated individual (hereinafter referred to as "Agent") to assume control over your personal and financial decisions and take action on your behalf. If you become incapacitated without a POA, then a court must appoint a legal guardian to act on your

behalf, which may result in actions being taken that are not consistent with your wishes.

Traditionally, a POA was merely a one or two page document that stated that the Agent could do the same things as the incapacitated person. As an individual ages, he or she may require long-term care. Elder law attorneys can protect a person's assets through different gifting strategies even after he or she enters a nursing home. However, this protection can only occur if an individual has a POA specifically authorizing gifts.

The third estate planning document for an individual is a Living Will. This document provides instruction to a health care provider. A Living Will can be tailored to meet the needs and wishes of the individual. A Living Will should specifically set forth the circumstances under which an individual does not want life-sustaining treatment. Furthermore, if the individual wants to be treated aggressively, no matter how hopeless his or her condition, the Living Will can so provide. Under New Jersey law, an individual may discontinue life-sustaining treatment in situations where there is no reasonable hope of recovery or when the individual is brain dead or in a terminal condition. The Living Will should define what the individual means by life-sustaining treatment. Usually, individuals do not want cardiac resuscitation, mechanical respiration, blood or blood products, any form of surgery or invasive diagnostic tests, kidney dialysis, antibiotics and chemotherapy.

A Living Will should also designate a representative to voice the individual's health care preferences to medical practitioners in the event the individual is unable to communicate such desires. The representative designated in the Living Will acts as an agent or Health Care Proxy for the individual. A Living Will and Health Care Proxy can be combined into one document.

Establishing an estate plan can be of tremendous benefit to you and your family. Creating an estate plan is not necessarily expensive. However, an untimely death without an estate plan can subject your estate to unnecessary taxes and disputes amongst your family.