

## **MOST COMMON ESTATE PLANNING DOCUMENTS:**

### **DURABLE POWER OF ATTORNEY (for financial and property transactions)**

If you were to have a serious disability, whether temporary or permanent, you need someone with authority to handle your financial affairs. If you were to become incapacitated without a “POA,” the only option for your family would be to establish a Probate Court Guardianship...usually a burdensome and perpetual approach. Having a co-owner or an additional signer on your bank account may be of some limited help, but that can expose *your* property to the creditor or spousal claims of the co-owner. That self-help approach would not enable your trusted person to do things like get license plates for, or to transfer your vehicle, deal with your real estate, IRA, or other property and investments. A Durable Power of Attorney can grant authority for someone to handle all your property and financial affairs while you are living. You can choose to make it quite limited in scope, or make it be very broad.

You can also give the person (and successors) you designate as your “agent” under a POA the power to do tax planning and legitimate Medicaid planning for you, if you were to suddenly become incapacitated and unable to handle things for yourself. Granting that type of planning authority can have risks, but we can help create appropriate safeguards.

### **HEALTH CARE DIRECTIVES (Living Will and Durable Power of Attorney for Health Care):**

A Living Will commonly expresses a person’s wish not to be kept alive by artificial life support systems, if the person has been determined by two physicians to be in a terminal condition or permanently unconscious state (both conditions are defined by Ohio law). A Durable Power of Attorney for Health Care typically enables you to appoint one or more successive agents to make health care decisions for you, if your physician determines that you do not have the capacity to make such decisions for yourself.

### **WILL:**

A Will is the instrument that governs how property passes and is distributed through the probate administrative process. A Will only disposes of the property held in your name alone at the time of death. It does not control property held jointly with right of survivorship (such as real estate or joint bank accounts), nor does a Will control property with having a beneficiary designation (such as life insurance, an IRA, 401(k), or transfer/payable on death accounts). A Will also frequently identifies guardians for your minor children (to be in charge of their care and custody) and can also establish custodians for property passing to beneficiaries under the age of 25 years if you are not relying upon a trust for that purpose.

## **REVOCABLE LIVING TRUST:**

A trust is a legal arrangement (a contract) by which property is held by, and in the name of, a “Trustee” for the benefit and use of a “Beneficiary.” Commonly the person making a Trust (the “Grantor” or “Settlor”) also serves as an initial Trustee, to administer the assets for the Settlor’s own benefit during the Settlor’s own lifetime and while mentally and physically able to do so. A trust may be funded during the lifetime of the Settlor by re-titling assets into the name of the Trustee of the trust, to be held in accordance with the terms of the trust (e.g. “John Doe, Trustee of the John Doe Trust”). A trust may also be funded, in full or in part, at the death of the Settlor by a “pour-over” Will that provides that probate property is also to pass under the Will to the Trustee. Often the probate administrative process can be avoided entirely at death by designating the Trustee of the Trust as the direct beneficiary of property such as life insurance, securities accounts, or even real estate.

*Common Advantages of a Trust.* The following are some of the circumstances when you may want to consider using a Trust:

- if you have a desire to avoid probate and avoid financial disclosure in Probate Court records,
- if you have younger children or beneficiaries with special needs who may need longer-term management assistance,
- if you want to have someone control (but not preclude) a beneficiary’s use of significant sums beyond the age of 25 (when a custodial account under the Uniform Transfers to Minors Act must terminate),
- if you have children by a prior marriage whom you desire to protect after your death, while still providing for a current spouse,
- if you have concerns about property passing to your in-laws or eventually reaching your descendants (children or grandchildren) in the event of the death of your spouse or child,
- if you want to protect your adult heirs from claims of creditors or spouses, particularly if there is a history or concern of financial or marital difficulties, or a business liability exposure,
- if you are one of the fortunate people for whom federal estate tax planning is appropriate due to having significant wealth,
- if you have adult children or beneficiaries who may have estate tax or creditor/spousal protection concerns of their own, in which case appropriate trust planning on your part may have significant estate tax or creditor protection benefits for them and their heirs.

*Possible Disadvantages of a Trust.* Some of the disadvantages of trust planning include: higher initial cost of setup, sometimes more complications during your lifetime, and lack of impartial court supervision of administration.