

## BASIC ESTATE PLANNING

By Joseph A. Bollhofer, Esq.

Everyone who reads this has an estate. It is, simply, everything you own. You should have something to say about it. Since physical comfort is at least as important as financial comfort, planning for health care also is an integral part of an estate plan.

There are four documents needed in a basic estate plan: a Last Will and Testament, Power of Attorney, Health Care Proxy and Living Will. Also, since 2006, New York law clarifies who has authority with regard to disposition of remains and permits you to give that authority to a specific person. A document doing so can be important to some people.

A Last Will and Testament can be simple or complex. At a minimum, you appoint someone to pay any debts and taxes due and to distribute remaining property under the Will to the named beneficiaries. Trusts and guardianships for minors usually are included. When someone dies without a Will or, sometimes worse, with a poorly written Will, the survivors often are unpleasantly surprised. On my website you will find an article that explains the results of these circumstances.

A Power of Attorney permits you to designate someone to act on your behalf for all matters, or only some that you choose. Usually a Power of Attorney is durable, that is, it is still valid if you become mentally incapacitated. In 2009, changes in New York law resulted in even the basic statutory form becoming significantly more complex, especially regarding the agent's authority to make gifts. Additions and modifications to the basic form are permitted, but only in a certain fashion. My website contains an article that explains the operation of the Power of Attorney and emphasizes the agent's fiduciary obligation to act in the principal's best interest (a concept that some agents do not fully recognize).

Under a Health Care Proxy, you name someone to make health care decisions for you. However, this person has authority only if a doctor determines that you cannot make those decisions yourself.

In a Living Will, you state your instructions to withhold or withdraw medical treatment generally that prolongs the process of dying. These instructions will be applicable under the circumstances that you state in the document, and if you are permanently unable to communicate. The issues regarding such treatment usually overlap with an agent's authority under a Health Care Proxy and therefore your intentions should be discussed with your health care agent.

In 2006, New York law created a clear order of authority regarding the disposition of someone's remains. As you might expect, unless a different person is appointed in writing, a spouse has primary authority, followed by a domestic partner, adult children,

parents and others. If you want to change that order, or if there might be a dispute among your children, it would be beneficial to all that you appoint a person to have control.

Estate and long term care planning often can get more complex. Trusts and other asset transfers can be valuable in many circumstances, such as minimizing taxes, avoiding probate and planning for Medicaid eligibility. However, the documents discussed above should be in place for everyone. In fact, a comprehensive Power of Attorney, Health Care Proxy and Living Will ought to be more important to you than a Will. If, for example, circumstances develop where you can not handle your own finances and/or can not make health care decisions, these rather inexpensive documents usually will avoid the significant costs and delay of having a guardian appointed by a Court.

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***Editor's Note:***

*Joseph A. Bollhofer, Esq., is an attorney who practices law in the areas of elder law, Medicaid, estate and business planning and administration, and real estate. He is a member of the National Academy of Elder Law Attorneys, and of the Elder Law, Real Property, and Surrogate's Court Committees of the Suffolk County Bar Association and of the Elder Law and Real Property Law Sections of the New York State Bar Association. He has been serving area residents since 1985 and is admitted to practice law in New York and New Jersey. His office is located at 291 Lake Ave., St. James, NY. (584-0100). For reprints of this article and others concerning Medicaid, Elder Law and Estate Planning, send a request to [info@bollhoferlaw.com](mailto:info@bollhoferlaw.com) or visit [www.bollhoferlaw.com](http://www.bollhoferlaw.com).*