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STANDARD ESTATE PLANNING DOCUMENTS AND PROCEDURES

An estate plan should provide for several documents to plan for various things which may happen during your life, and after your death. Everyone should have a basic estate plan, and should consider each of the following documents. For most of these, you will name key individuals (or entities) as your agent, and we will need their names, contact information (address, phone, e-mail), and any other relevant information about them.

1. **Living Trust**. In some cases, it makes more sense to set up a revocable living trust (“RLT”) to handle clients’ estate planning wishes than to put these in a will. Pros: more privacy (the trust will not need to be filed with the court for probate), can handle out of state real property (as opposed to a will, where an ancillary probate proceeding will have to be brought in the appropriate State), and may be simpler and less expensive to administer upon someone’s death versus going through probate. Cons: more expensive and complicated to set up. Clients must make sure to have *all* their assets transferred into the trust during their lifetimes, and maintain them that way, or their “pourover” wills will have to be probated anyway. The trust must be properly set up with and communicated to any banks, brokerages, and financial institutions to make sure they will properly honor it upon someone’s death; otherwise, it could turn out to be more difficult to administer assets than if one has Letters Testamentary to show. If this estate planning route is chosen, the Wills which go with it are simple ones which “pour over” any assets into the living trust.
1. **Will**. This document states how you want your estate handled and your property distributed after your death. It also appoints an *executor*. The executor is the party you name to oversee the management and distribution of your estate. In order to prepare your will an ordered list of the parties you want to serve as your executor, and your directions for how you want your assets distributed upon your death will be needed. A Will may also contain designations of guardians for children and trusts to take care of loved ones after your death. Trusts may be contingent (only created if and when needed), tax-related (for larger estates tax planning), residuary (to take care of children and grandchildren, even if no longer minors), or for many other purposes (e.g., special needs trusts).

2. **Declaration of Guardian.** This document allows you to appoint parties who will serve as your guardian if you are ever declared “incapacitated” by a court, meaning you need someone to be appointed to be legally responsible for your care. There are two kinds of guardians: the *Guardian of the Person* (who makes the day to day decisions such as where you will live, medical care, clothing, shelter, and so on), and the *Guardian of the Estate*, (who manages your financial affairs). The guardian of the person and guardian of the estate may or may not be the same person.
3. **Declaration of Guardian for Children.** A “Declaration of Guardian for Children” allows you to appoint parties who will serve as guardians for your minor children should something happen to both you and your spouse. As in your Declaration of Guardian, there are two kinds of guardians, the Guardian of the Person and the Guardian of the Estate.
4. **Statutory Durable Power of Attorney.** A “Statutory Durable Power of Attorney” allows you to designate an agent to manage your financial affairs. It is called a “Statutory” durable power of attorney because it is a form provided by the legislature, which is generally more likely to be accepted by third parties. The appointment may be revoked at any time and terminates upon your death. This document is very useful because it allows an agent to manage your financial affairs when you are unable to do it yourself.
5. **Medical Power Of Attorney.** A “Medical Power Of Attorney” allows you to designate an agent to make medical decisions on your behalf if you are unable to communicate your wishes.
6. **HIPAA Authorization.** A “HIPAA Authorization,” names the people you authorize your doctors, nurses, hospitals, and other medical care providers to talk to about your medical condition. Without this, under federal law your health care providers are not allowed to communicate with and provide medical information to anyone, including your loved ones.
7. **Directive To Physicians.** A “Directive To Physicians,” also known as a “Living Will,” communicates your wishes about whether you do or do not want artificial life support or artificial nutrition and hydration (food and drink) if you are ever diagnosed with a terminal or irreversible condition. You will make choices at the time you sign it that will determine how it will operate.
8. **Appointment for Disposition of Remains.** An “Appointment for Disposition of Remains” allows you to name a person to carry out your wishes as to what will

happen to your body after death (e.g., cremation). You may provide special directions about your wishes in the document.

9. **Anatomical Gift Declaration.** If the client wishes me to, I provide an Anatomical Gift Declaration for the client to complete and sign, showing if he or she wishes to donate body parts or organs, and sometimes if the client does *not* wish to make any such donation.
10. **Declaration for Mental Health Treatment.** *Optional, if Requested.* A “Declaration for Mental Health Treatment” allows you to direct what psychoactive medications may be administered to you and the limitations and conditions that will apply. It also allows you to consent to or refuse the use of convulsive treatment (“electro shock therapy”). You may also specify your preferences for emergency treatment for mental health issues.
11. **Out Of Hospital DNR.** *Optional; ordinarily only applies to someone of advanced age or with a terminal illness.* An “Out Of Hospital DNR” allows you to direct that cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, and artificial ventilation may not be initiated or continued. This document can also be executed by a qualified relative, legal guardian, and other authorized parties for a person who is incompetent or otherwise incapable of communication.
12. **Other Ancillary Forms Provided.** At the document signing, I customarily provide clients with a zippered bank bag to store their documents in, along with other forms they may find useful:
 - a. **Trust Summary and Memorandum re Funding.** If a revocable living trust is involved, I provide a summary of the trust, and a detailed Memorandum containing instructions regarding funding the trust.
 - b. **Contact Information Sheet.** A list of names and contact information referenced within the estate planning documents, with space for noting changes.
 - c. **Memorandum of Wishes.** These forms allow clients to express their wishes as to disposition of personal items, or of general management of their estates, while avoiding the possibility that those wishes might wind up judged to be codicils to their Wills or amendments to their Trust. The forms expressly state that they are *not* amendments, but rather suggestions. This provides some flexibility with respect to intangible factors and personal property.

- d. Funeral & Memorial Instructions. These are forms clients may fill out with respect to their funeral, memorial, and internment wishes, from individuals who should be involved, religious preferences, groups, clubs, societies, music, all the way down to how much they wish their heirs to spend.
 - e. Estate Organizers. These forms are helpful in indicating where various essential documents are being kept, who are people to notify upon the person's passing, and general information about assets in the clients' estates.
 - f. When There is a Death in the Family. Dealing with the death of a loved one is one of the more difficult things we go through in life, and most often bereaved family members have to figure out things for themselves. "When There is a Death in the Family" is a letter containing general instructions and recommendations for pre-death planning and managing affairs for shortly after the death of a loved one.
 - g. Death Has Occurred Checklist. This form provides a more detailed checklist and information sheets that may be used following the death of a loved one to make sure all bases are covered and all essential matters are handled.
13. After the Signing. I ordinarily conduct the signing, and retain the original signed documents for a day or two. This allows me to scan them in and return the original documents to the client, along with a closing letter containing further instructions and recommendations, and a flash drive containing not only scans of the signed documents but also the original text versions (much better for searching), all of the above-mentioned ancillary forms in an Acrobat PDF-Fillable format, allowing clients to fill out forms on their computer and print them out for signing, plus a KeePass (freeware, open source, password database) utility for helping them keep control of digital assets and passwords. All this comes with an electronic cover sheet on the flash drive showing them what is available.