Essential legal documents you need to take care of your Family

Soo Yeon Lee, Esq. 1 N. LaSalle Street, Suite 600, Chicago, IL 60606 Tel: 312-332-2400 SLEE@MAUCKBAKER.COM

Are there legal documents that can take care of your family?

BY SOO YEON LEE, ESQ.

Plan for your life, not just for your death.

From our birth to the end of our lives, we have many cherished moments with our loved ones for which no legal documents are generated. However, major life events such as birth, marriage or death all accompany some sort of legal or official documents. In between these major life events, we go through various stages of our lives and there comes a time when we or our loved ones cannot take care of themselves any more, either due to physical or mental weakness. It is important to be able to help them (or more precisely, have a legal authority to act on their behalf). When a family member suffers loss of capacity, these four (4) documents are essential to ensure that you and your family can take care of each other through life's ups and downs. As you review this information, please keep in mind two overarching themes: Loss of capacity and decisions. These documents will prepare you and your family in the event of a loss of capacity, and will help you make good decisions.

One step further, estate planning

The term "estate planning" is not doing a great job in setting the right tone about the very important job it does. It sounds like you don't have to have a plan if you don't have an "estate," or if you are young. For lack of a better word, this generic term is used, but the important aspect of estate planning for an average family is that it is more about planning throughout your life how your family will be protected and taken care of through life's many contingencies. Everyone has something to pass on. It is easy to limit our consideration to material things, but it goes beyond that. The true legacy we pass on lies in the values and visions we hold and how they have guided us through our lives, as well as all of life's blessings and important lessons we learn.

Four Essential Documents

1. GUARDIANSHIP

This document appoints a legal guardian for your children in the event you and your spouse are unable to take care of them.

If something were to happen to parents, leaving them unable to communicate or take care of their minor children, having a legal guardian nominated in advance could reduce the chaos and avoid the possibility of your children being in protective custody while family members or relatives are located. This is especially important for those who have no family members locally. For those families who have no relatives in the same locale, it is recommended that they have a short term guardian with legal authority to take custody of the children until a permanent long term guardian can be located and become available from out of town or even out of the country.

Usually, nomination of guardianship of minor children is addressed in a will. It is important to name your guardian so that other people including the court will know your choice as to the best person(s) to raise your children. A court must determine who will raise your minor children and handle the finances for them if neither parent is alive. By clearly expressing your wish, you avoid unintended misunderstanding that may break family harmony or unnecessary delay that may affect the children.

2. POWER OF ATTORNEY FOR PROPERTY

This document appoints an agent (or attorney-in-fact) to act on your behalf with respect to your property.

It appoints a trusted family member, friend or advisor as your agent to make financial decisions on your behalf if you become physically or mentally unable to do so. The person granting the power can tailor what powers to give. It has to be signed prior to incapacitation. It can be effective upon execution, or can be drafted to come into effect upon incapacity. A very common misunderstanding is that a Power of Attorney for Property can be used to have access to funds in bank accounts after the account holder dies. This is inaccurate. Power of Attorney for Property terminates upon death. Therefore, it is not a will substitute.

Illinois, as well as many other states, has a statutory form. It is recommended that a statutory form be used, because it is easily recognizable and most financial institutions will accept it.

However, careful drafting is important in certain circumstances to avoid unintended consequences.

3. POWER OF ATTORNEY FOR HEALTHCARE

This document appoints an agent to make healthcare decisions when you are unable.

Power of Attorney for Healthcare appoints someone you trust to make medical decisions when you are unable to do so. This also terminates at death. It is effective during the lifetime of the person granting the power. Illinois has a statutory form, although it may be a bit confusing to figure out how to fill it out.

A living will expresses specific wishes about certain aspects of end-of-life care. It does not grant authority to the agent, but expresses your wishes for the agent to follow and it has authority during the lifetime of the person granting the power. Illinois also has a statutory form available.

4. WILL AND/OR TRUST

A will only becomes effective upon your death. A trust is effective during your life and after your death.

A will is a written document that is signed and witnessed. It distributes property/assets owned by you. If you have minor children, you will also nominate a legal guardian for your children. A will, however, has no authority over joint property, retirement plans, or life insurance. A will is considered a "death" document as it only goes into effect when you die. An original will has to be filed in court after death, and then goes through "probate." Probate is a public process and the contents of the will also become public. It could also be expensive and delay timely administration of assets. While avoiding probate completely may not be possible, you can minimize the extent and scope of probate.

A trust (revocable living trust) is a legal document, signed and witnessed. It holds assets during your lifetime and names the people who will receive the trust property after your death. In a trust, there is a settlor or grantor (the person who creates the trust), a trustee (the person who manages the trust), and a beneficiary. In a typical scenario, the grantor, trustee and beneficiary are the same person. It does not remove assets in the trust from the grantor's estate, which means that the property held in your trust is deemed to be owned by you directly during your life. Therefore, putting assets in a revocable or living trust does not protect such assets from creditors.

There are two major differences that distinguish a trust from a will.

First, a trust is effective during your lifetime, during any period of disability, and after death. If you become unable to take care of your own affairs, your trustee will be able to step up and manage them. Therefore, this is an essential tool for life planning. Secondly, assets in a trust are not subject to probate thus minimizing the amount of legal procedures. It provides privacy regarding estate distribution as this is a private document.

Important Note (Disclaimer)

THE INFORMATION CONTAINED HERE HAS BEEN PREPARED FOR INFORMATIONAL PURPOSES ONLY, AND IS NOT LEGAL ADVICE. THIS MATERIAL DESCRIBES ISSUES IN GENERAL TERMS, AND GOOD LEGAL ADVICE REQUIRES DETAILED ANALYSIS OF PARTICULAR FACTS AND CIRCUMSTANCES. WE WELCOME THE OPPORTUNITY TO DISCUSS LEGAL REPRESENTATION WITH READERS OF THIS MATERIAL. HOWEVER, THE PUBLICATION OF THIS MATERIAL IS NOT INTENDED TO CREATE, AND RECEIPT OF THE SAME DOES NOT CREATE, A LAWYER-CLIENT RELATIONSHIP.

For More Information, Contact Us.

Soo Yeon Lee, Esq.

MAUCK & BAKER, LLC

1 N. LASALLE STREET, SUITE 600

CHICAGO, IL 60602

312-332-2400

SLEE@MAUCKBAKER.COM

