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Important Information about a Will and Ancillary Documents

A. Key Decisions:

1. **1. Will:** A Will is a formal legal document that provides for disposition of your property upon your death, except life insurance, property held as a joint tenant with rights of survivorship or paid on death accounts. You should carefully consider what you are leaving to whom, and who will be trustees, executors and guardians before you make a Will. A Will should also include a "self-proving affidavit", which saves on probate costs by expediting a court's acceptance of a Will in probate
2. **Beneficiaries:** If you give a person something in your Will, that person is known as a beneficiary. In most situations, beneficiaries "PER STIRPES." That means that the children of your child (your grandchildren) will take that child's inheritance if that child dies before you. Another way is "PER CAPTIA" and in that situation living heirs not just your children received pro rata shares. Your Will may also provide for future children unless you specifically indicate your intention to the contrary. Many people leave their entire estate (including residual estate) to one person; however, if you want to give someone a particular item you can list that item in your Will by including a specific description of that item and to whom you wish to give that item to. Consider an alternate person in your specific bequest or you can allow the item to return to the other provisions in your Will.
3. **Executor:** A Will permits you to name the person you want to "execute" or carry out the terms of your Will. This person is known as the "executor" if a male, or the "executrix" if a female. Texas law allows you to direct that the executor be independent of the probate court and that no bond be required, and, unless you specify otherwise, your executor will be an independent executor. Your executor pays your debts, funeral expenses, etc., accumulates your possessions, distributes them according to the terms of your Will, and otherwise represents your estate's legal interests. You may, and should, nominate an alternate executor to represent you if for any reason the primary executor is unable to serve. Make sure your executor knows he or she will be designated. The executor may, but does not have to be, a beneficiary in your Will.
4. **Guardian:** You may name a person to serve as guardian of your minor or disabled child(ren) if the child(ren)'s other parent does not survive you. If you wish to name two people to act together as guardians, the two individuals must be married to each other. If you are divorced and wish to name someone other than the child's natural parent as guardian, your wish may or may not be honored. Normally a surviving natural parent has a greater right to custody of a child than will any other person you may nominate. DO NOT assume that designating a guardian in your will resolves guardianship.
5. **Trust:** A trust is a specialized legal document where part or all of your estate is held in Trust and managed and distributed for your child's (usually minor child's) support, education, and welfare by a Trustee you appoint. If a minor inherits under your Will and there is no trust, the Texas courts may, upon application, appoint an adult to

administer the inheritance for the minor. This costs money. If you wish, a trust can be included in your Will for the benefit of any minor child who may inherit under your Will to avoid these extra costs. (This is a simple trust.)

B. Ancillary Documents:

1. **Directive to Physicians** : The *Directive to Physicians* (sometimes referred to as a *Living Will*) enables you to state your wishes concerning the use of life-sustaining procedures if you are in a terminal (life expectancy of 6 months or less) or irreversible (requiring full-time care) condition.
2. **Medical Power of Attorney (MPA)**: The Medical Power of Attorney you to designate a trusted person to make medical decisions for your treatment if you become incapacitated, and unable to make those decisions for yourself. (A good practice is to place a copy of the Directive and the MPA in your medical records.)
3. **General Power of Attorney**: A general power of attorney will authorize a person that you appoint, called an attorney-in-fact, to sign important documents on your behalf including financial documents. This is a very powerful document that should only be given to somebody that you have the utmost trust in.
4. **Declaration of Guardianship**: A declaration of guardianship is a document in which you may indicate who you want to act as your guardian in case you become incompetent. With this document you may also disqualify a specific person to act as your guardian. This document is only for yourself; the guardianship of your children is provided for in your Will. Execution of this document does not replace the need for court appointment of a guardian; it only serves as evidence of your intentions should such a proceeding become necessary.
5. **Other documents subject to further discussion with attorney:**
 - a. Agent to control Disposition of Remains
 - b. Declaration of Appointment of Guardian for Children
 - c. HIPAA Release and Authorization

C. Future Steps:

1. **Execution of your Will**: After our meeting, I will draft your Will. I will send you the draft and answer your questions either in person or in some other setting. After all your questions are answered and you are satisfied with the answers and the draft, we will set an appointment to sign your Will. You must sign your Will in the presence of at least two witnesses, who must sign the Will in your presence. You may consider arranging for your own witnesses to attend this appointment, or at your direction I may schedule the witnesses. (Witnesses shouldn't be beneficiaries and they should be familiar with you, a friend or neighbor.) I will arrange for the presence of a notary, who will acknowledge and attest to signatures.
2. **Storage of your Will**: Your Will should be stored in a safe and accessible place. A safety deposit box provides safety, but may be sealed upon your death, requiring your executor to obtain a court order to open. Wherever you store your Will (and other important papers) make sure you tell your executor and alternate executor. Remember only your original Will can be offered for probate.
3. **Changes to and Review of your Will**: At least annually you should review your Will to ensure that it still expresses your intentions—especially if someone named in your Will dies or can't perform as executor, guardian, or trustee; your financial condition substantially changes; or you are divorced. **Don't write on your Will**; make notes on a separate sheet of paper. Many states, including Texas disregard lineouts or require costly court hearings to discern your real intent. In certain circumstances, marking on your Will could serve to void all or part of your Will. Changes to your Will should be done properly and with the advice of an attorney.

D. Other:

Joint Representation—permission from husband and wife to provide advice and counsel in this estate plan. See attachment, joint representation.

LAST WILL AND TESTAMENT INITIAL WORKSHEET

1. NAME: _____
FIRST MIDDLE LAST

2. YOUR COUNTY AND STATE OF LEGAL RESIDENCE: _____

3. ARE YOU A U.S. CITIZEN? ___ Yes ___ No
If no, are you a: ___ Legal Permanent Resident ___ Resident Alien

4. WHERE YOU CURRENTLY RESIDE:
STREET: _____
CITY: _____ STATE: _____ ZIP: _____
TELEPHONE NUMBER: _____

5. YOU ARE: ___ MALE ___ FEMALE

6. WHAT IS YOUR MARITAL STATUS?
___ Married once and spouse is alive.
___ Married and spouse is alive, but you were married before (a prior spouse died or was divorced).
___ A widow/widower (spouse has died) and now single.
___ Previously married, but now divorced and single.
___ Single and never previously married.

7. IF MARRIED, SPOUSE’S NAME:

FIRST MIDDLE LAST

Is your spouse a U.S. citizen? ___ Yes ___ No
If NO, you may not be able to give your estate to your spouse outright due to legal limitations regarding transferring an estate to a noncitizen spouse. You may be advised to seek the assistance of an estate planning specialist.

8. DO YOU HAVE CHILDREN? ___ Yes ___ No ___ Not yet, but children are anticipated.
If YES or if children are anticipated, continue below.
If NO, proceed to question #11.

CHILDREN’S NAMES AND AGES:
(See notes about children below.)
Full Name: Age: Contact info-address, cell, email

NOTES ABOUT YOUR CHILDREN:

- Include natural or legally adopted children.
- Include stepchildren if you want them to share in your estate like natural children. **Stepchildren will not be considered your children unless specifically listed in your Will.** Please note above if any the children you listed are your stepchildren.
- Include deceased children **only if** they had children/grandchildren who are still living.

IF ANY OF YOUR CHILDREN ARE UNDER 18 YEARS OF AGE, CONTINUE BELOW. IF YOUR CHILDREN ARE ALL 18 OR OLDER, PROCEED TO #11.

9. GUARDIAN APPOINTMENT: This is the person whom you would like to take care of any of your children who are minors (under 18) if no parent is alive. This appointment is subject to a judge’s approval.

Full Name:

Relationship to you:

PRIMARY: _____

1st ALTERNATE: _____

2nd ALTERNATE: _____

10. TRUST FORMATION AND TRUSTEE APPOINTMENT

(a) If any child is a minor at the time of your death, you must determine whether the money/property you leave to your child will be held in trust or whether you want your executor to have discretion as to how the minor’s inheritance will be handled.

(b) DO YOU WANT THE PROPERTY:

_____ Held in trust (Continue below) -or- _____ Up to Executor’s discretion (Skip to #12)

(c) IF YOU WANT A TRUST, AT WHAT AGE DO YOU WANT YOUR CHILD TO RECEIVE THEIR MONEY AND/OR PROPERTY:

_____ 18 _____ 21 _____ 25 _____ 30 _____ OTHER

(d) IF YOU HAVE MORE THAN ONE MINOR CHILD, DO YOU WANT A SINGLE TRUST FOR ALL OF THE CHILDREN OR SEPARATE TRUSTS FOR EACH CHILD?

_____ Single _____ Separate

(d) TRUSTEE APPOINTMENT: This person will manage and be responsible for the money/property that you have left to your minor children until they reach the age you have chosen above. Note that the *guardian* of the child has the right to request money from the *trustee* for your child’s health/ education/ general welfare. Also note that the guardian and the trustee *can* be the same person.

Full Name:

Relationship to you:

PRIMARY: _____

1st ALTERNATE: _____

2nd ALTERNATE: _____

11. YOUR ESTATE IS TO BE GIVEN AS FOLLOWS:

- To your spouse outright.
- To your spouse outright; but if your spouse dies before you, then to your children. (Discuss Per Stirpes)
- To your children.
- To someone other than your spouse or children (list person or people below).

(a) ALTERNATE BENEFICIARIES (if desired):

Full Name: _____ Relationship to you: _____

(b) QUESTION: If one or several beneficiaries die before you, do you want their share to go to (Pick one):
 their children or descendants, if they have any, OR
 the other beneficiaries you have named.

(c) DISINHERITANCE: Is there anybody that you would like to specifically disinherit?

Name: _____ Relationship to you: _____

12. DO YOU OWN REAL ESTATE? YES NO

If YES, what type of property is it? (E.g. Homestead, rental property, Family Farm, Unoccupied Land, Commercial)

Do you want to leave any real property to a different beneficiary than the rest of your property?
 If so, who? _____

13. DO YOU HAVE ANY TANGIBLE PROPERTY OR CASH THAT YOU WANT TO GIVE TO A SPECIFIC PERSON (only if different than the people listed above)? YES NO

If YES: Piece of Property/Amount of money: _____ Beneficiary's name/Relation to you: _____

14. EXECUTOR: This is the person who carries out the instructions in your Will. Your executor pays your debts and funeral expenses, distributes your possessions according to the terms of your Will, and otherwise represents the legal interests of your estate.

DO YOU WANT YOUR SPOUSE TO BE YOUR PRIMARY EXECUTOR? YES NO
LIST ALTERNATIVE EXECUTORS HERE (IN ORDER OF PREFERENCE):

Full Name: _____ Relationship to you: _____

ANCILLARY DOCUMENTS (Check those you wish to have drafted):

 DIRECTIVE TO PHYSICIANS (LIVING WILL).

This document instructs your doctors regarding your wishes for medical care in the event you are terminally incapacitated and unable to communicate. Please note that in the absence of a living Will, doctors and other health care professionals will simply keep you alive as long as possible, so if that is what you want, you do not need a living Will.

The language is generally as follows (with variation from state to state):

“If, in the judgment of my physician, I am either (a) suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care, or (b) suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of medical care, then in either such event I direct that life-sustaining treatment be withheld and withdrawn and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to keep me comfortable and to relieve pain. The procedures and treatment to be withheld and withdrawn include, without limitation, surgery, antibiotics, cardiac and pulmonary resuscitation, respiratory support, blood and blood products, dialysis, chemotherapy, radiation therapy, artificially administered nutrition and hydration, and invasive diagnostic tests.”

“If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of available medical treatment provided within the prevailing standards of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort.”

 MEDICAL POWER OF ATTORNEY (POWER OF ATTORNEY FOR HEALTH CARE).

A Medical Power of Attorney allows a trusted person to make medical decisions for your treatment when you are incapacitated and unable to make those decisions for yourself. This appointment is particularly important to have someone to make decisions about specific procedures or treatments.

INFO For Medical Power of Attorney

1. YOUR NAME: _____

2. The person (your agent) you want to appoint to make health care decisions for you is:

FULL NAME: _____

ADDRESS: _____

PHONE: _____

3. Alternate agent(s) if my agent is unwilling or unable to make health care decisions for me (optional). If you do not want to name alternate agents, please write “none.”

FULL NAME: _____

ADDRESS: _____

PHONE: _____

OR (See next page)

FULL NAME: _____
ADDRESS: _____
PHONE: _____

4. Do you want to make limitations on the decision-making authority of your agent?

Yes _____ No _____

If yes, please explain what those limitations are on your agent's authority to **make medical decisions** for you: _____

5. Do you want this power of attorney to exist indefinitely? Yes _____ No _____

If not, when do you want it to expire: _____

6. Is your agent to be authorized to donate your organs for transplants after your death?

Yes _____ No _____

7. Do you want to appoint your health care agent as the agent to deal with the disposition of your remains?

Yes _____ No _____

____ **STATUTORY DURABLE (GENERAL POWER OF ATTORNEY).**

A General Power of Attorney is a document by which you give another person authority to perform acts on your behalf. You can and should limit when it takes effect and its scope. NOTE: You are completely bound by any acts performed by the other person if those acts are authorized in the Power of Attorney. So, you should select someone in whom you have complete trust as your agent.

1. The person I want to appoint to conduct my personal business and finances for me is:

FULL NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

2. Alternate agent(s) if my agent is unwilling or unable to act (optional). If you do not want to name alternate agents, please write "none."

FULL NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

OR

FULL NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____