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COMMON ESTATE PLANNING DOCUMENTS

WILL:

A Will is the document that you prepare to say who you want to receive your property at death, and who you want to handle your estate. If you have minor children, you would also want to name the person that you want to be the guardian of the children, and the trustee of the minor's trust (minors are not able to take gifts directly; the gifts need to be held in trust for them until they are adults).

MEDICAL POWER OF ATTORNEY:

A Medical Power of Attorney is a document that allows you to name an agent to make health care decisions for you, if you become unable to make those decisions yourself. Without this document, neither your spouse nor your children have any authority to make health care decisions for you, except in an emergency, without a court appointing them as your guardian.

STATUTORY DURABLE POWER OF ATTORNEY:

The general Statutory Durable Power of Attorney is a document that allows you to name an agent, or "attorney-in-fact", to make other non-health care decisions for you. This would include things like paying your bills, and generally handling your financial affairs. You can make this effective immediately, or reserve those powers until you become unable to handle your own affairs.

DIRECTIVES TO PHYSICIANS (“LIVING WILL”):

A Directive to Physicians allows you to make end of life decisions regarding life sustaining treatments when you have either a terminal condition or an irreversible condition. It will control even if your agent is not present with a Medical Power of Attorney. Medical providers are legally required to resuscitate you unless you either have a Directive to Physicians that says you want to be kept comfortable, but no heroic measures, or unless your agent under a Medical Power of Attorney is present to tell them not to resuscitate.

DECLARATION IN EVENT OF GUARDIANSHIP (FOR ADULTS):

A Declaration in Event of Guardianship for an adult allows you to name, in your order of preference, the people that you would like to have named as (1) Guardian of you Person, and (2) Guardian of your Estate, in the event that a Guardianship is ever required. You may also specify who you would never want to be appointed Guardian of your Person or Estate. Sometimes people will file for Guardianship over a family member to try to trump or override their medical or financial powers of attorney. This document prevents them from changing your advanced planning, and would prevent them from filing for Guardianship if they know they could not change the order of persons named to act for you.

DECLARATION IN EVENT OF GUARDIANSHIP (FOR CHILDREN):

A Declaration in Event of Guardianship for a minor child(ren) allows a parent to name who they would like to act as Guardians for their child(ren)'s Person and Guardians for their child(ren)'s Estate in the event that the parent is incapacitated and unable to act as their child(ren)'s natural guardian. While a Trustee or Guardian may be named in a parent's Last Will and Testament, that document has no legal force and effect while the parent is still alive, even though they are incapacitated.

DISPOSITION OR REMAINS:

A Disposition of Remains allows you to specify if you prefer to be buried or cremated, and then appoints agents to carry out your wishes. If you do not have this document, a funeral home will require consent from a spouse, or proof that you are no longer married, and unanimous consent from all of your children to handle your remains.

HIPAA AUTHORIZATION:

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") restricted who medical providers could share your health information and other medical records with, unless they have specifically been given permission to share such information. Properly drafted medical and financial powers of attorney should always include the proper HIPAA release information. However, sometimes a family member or loved one might need access to your records or medical information to assist you when you are not incapacitated, or you have not granted authority to act immediately through your financial powers of attorney. If so, they will need a HIPAA Authorization to access to that information.

If you would like more information about these documents, please give our office a call.