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GLOSSARY TO ESTATE PLANNING TERMS

Will: A document that sets forth your instructions for who gets your property after your death, appoints guardians for your minor children if they have no living parent, and appoints an executor to make sure your wishes are carried out.

Power of attorney: A document in which you grant authority to a person to act on your behalf (this person is called the “agent”). The agent may do things that you could do, such as access bank accounts and sign contracts.

General v. Limited: A general power of attorney (often called a “financial power of attorney”) will allow your agent to do all things which you could do. A limited power of attorney restricts the agent’s powers to certain specific matters or concerns.

Durable v. Non-durable: A durable power of attorney is one that continues in effect if you become incapacitated. This is a critical component of an estate plan that depends on a trusted agent acting for you when you become incapacitated, thus avoiding a court appointing a guardian or conservator. A non-durable power of attorney terminates and becomes no longer valid if you become incapacitated.

Immediate v. Springing: A power of attorney may become effective upon your signing it, or it may become effective only when you become incapacitated. In the latter case, it is called a “springing” power of attorney because it springs to life upon a future event.

Medical power of attorney: A medical power of attorney is a limited power of attorney which appoints an agent to make health-care and medical treatment decisions for you if you are incapacitated or otherwise unable to make an informed health-care treatment decision (for example, if you are brain-damaged, in a coma, or have dementia).

Advance medical directive: An advance medical directive is a document containing your instructions regarding end-of-life decisions and medical treatment you do or do not wish to receive.



Trust: A trust is a document that creates a legal “box” that will own property assigned to it. It will appoint a person as trustee in charge of managing the trust, and will provide instructions on how the trustee will manage the trust. A grantor creates the trust; a trustee manages the trust; a beneficiary receives the benefits and income from the trust. Depending on how the trust is structured, one person can hold one, some, or all of these roles.

Living v. Testamentary: A living trust is created and exists during the grantor’s life, and is not subject to the probate court’s supervision. A testamentary trust is created by a will; it may be formed during the grantor’s life, but does not actually spring to life until the grantor’s death, and is subject to the probate court’s supervision.

Revocable v. Irrevocable: A revocable trust is a trust in which the grantor retains control and benefits of the trust; an irrevocable trust is a trust in which the grantor does not retain any control of the trust and does not receive any of the income or benefits from the trust. Irrevocable trusts are normally used to completely remove assets from the grantor’s estate, such as for tax or asset protection purposes.

Special needs trust: A special needs trust is a trust that enables a person with disabilities to retain his or her own resources, or enables family members to provide an inheritance for a disabled person, without disqualifying the individual from needs-based government benefits such as Supplemental Security Income or Medicaid benefits. They can be created by the disabled person who is the beneficiary of the trust using the disabled person’s own assets (such as an inheritance or a personal injury settlement), or can be created and funded for the benefit of the disabled person using someone else’s assets.



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