

Spooner Law, PLLC

BASIC ESTATE PLANNING GUIDE

(Provided to Understand the Terms)

The executor and guardians for children are identified in your will; the medical power of attorney, HIPAA, Directive to Physicians, and durable financial power of attorney are usually distinct legal documents authorizing specific individuals to carry out certain tasks. The trustee of a trust can be identified in your will in a testamentary trust or in a separate trust document.

Executor of the Will

The executor conducts the terms of the will and sees the estate settlement process through to completion. The executor should have financial acumen and patience because that person will be responsible for collecting the deceased's assets, paying bills, submitting tax returns, filing court documents and petitions, and distributing the assets to beneficiaries on behalf of the estate. If your executor does not have any experience with estate settlement, he or she will turn to an attorney for guidance. You want to have at least one backup executor named in your will.

Guardians for Minor Children and Other Dependents

To help ensure that the needs of your minor children are met in the event of your death, a legal guardian to care for them is identified in the will. A guardian can be a family member or a trusted friend.

Consider naming a guardian for children or other dependents who may be unable to care for themselves as adults to ensure they have the care and oversight they need indefinitely.

Medical Power of Attorney and Directive to Physicians

A Medical Power of Attorney document allows you to give another individual legal authority to make health care decisions for you in the event you become incapacitated. In addition, Directive to Physicians can allow you to state your wishes directly to your doctors.

The objectives are to 1) appoint a person you trust to act on your behalf for health care decisions when you cannot, and 2) ensure that your intentions are well understood.

Angela K. Spooner
aspooner@spoonerlawtx.com
❖ licensed in Texas and Iowa ❖

P.O. Box 2384
Keller, Texas 76244
Phone (817) 264-7041



www.spoonerlawtx.com

This HIPAA Release

This form provides patients with access to their personal health records. The HIPAA form also allows health care providers to share records, with the form specifying the conditions for sharing and the purposes for its use. The HIPAA release form can be revoked at any time.

Guardian of Your Estate

The Guardian of your estate is entitled to possess and manage your property including all assets within your estate. The Guardian will also enforce any obligation in favor of you and bring and defend lawsuits by or against you.

Guardian of Your Person

The Guardian of your person has a duty to provide care, supervision, and protection for you. This includes providing clothing, food, medical care (i.e., decisions on operations, medications, and medical procedures and treatments) and shelter.

Generally, a guardian of your estate is unnecessary if you have already appointed an agent under the financial power of attorney, and a guardian of your person is unnecessary if you have appointed an agent under the medical power of attorney. However, a court-appointed guardianship overrides the power of attorney. If the court appoints a guardian of your estate, that guardian replaces the agent named in your durable power of attorney. Likewise, if the court appoints a guardian of your person, that guardian replaces the agent named in your medical power of attorney. These individuals serve only if you become incapacitated.

Financial Power of Attorney

The power of attorney document gives another individual the authority to make financial and legal decisions and act on your behalf as authorized by the document. This person is known as the "attorney in fact" or "agent" and can be your spouse, partner, or anyone you trust. The power of attorney can apply to all your affairs or be limited to assets or accounts you own.

A durable power of attorney means this arrangement will continue until your death, unless it is formally revoked; it remains in effect when you become incapacitated or are no longer able to make financial decisions on your own behalf. The durable power of attorney can take effect immediately or at the time of your incapacity but must be established while you still have your mental capacity. You cannot create a durable power of attorney once you become incapacitated.

Trustee

Any asset placed in a trust as part of your estate plan will require a trustee. The trustee acts as the manager of trust assets, and is responsible for managing the assets, ongoing administration, and tax filings for the trust, and making distributions to your beneficiaries according to the terms of the trust.

If you have any further questions, please do not hesitate to contact us:

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admin@spoonerlawtx.com
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