

Important estate documents explained by experts

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For many of us, even attorneys, estate and health care planning seem like an incomprehensible morass of documents needed only by the wealthy and elderly. When properly explained, however, it becomes clear what each document is, why it is important, and how it helps during all phases of our lives — in health, during incapacity, and after death — regardless of age or financial status. Depending on your particular family and financial circumstances, a foundational estate plan typically includes consideration of several essential documents, including:

• **Will:** This is a document by which you nominate an executor to oversee distribution of your belongings (your “estate”) pursuant to your wishes, and direct where and to whom your estate will go after your death. A will can be a good choice for small estates and in certain personal situations because it is typically less expensive to prepare than a living trust. The downside to a will is

that after your death your estate may have to go through the time-consuming and expensive probate court process to distribute your belongings.

• **Trust:** A trust is a legal arrangement by which title to trust assets is held by you as “trustee” of your trust rather than by you as an individual. Like wills, trust instruments direct distribution of your estate after your death, but they have the added advantage of assisting you during your life by empowering your chosen “successor trustees” to assist you with financial matters if you ever become incapacitated. For example, a properly drafted trust enables a successor trustee to step in and assist you if you develop Alzheimer’s disease or any other condition that would impair your ability to manage your assets. In addition, a properly drafted trust will remove your estate from the probate system altogether, making assets more readily available for your loved ones upon your death, and it can provide tax advantages for your estate, which will preserve

as much of your estate as possible for those loved ones. Trusts are not just the province of the wealthy. The bottom line is that if you own a home in Ojai, you may well be best-served with a living trust.

• **Nomination of Guardians:** This is the document by which you nominate guardians for your minor children — for their persons (who will raise them) and for their estates (who will manage their assets, if any). Put another way, this is the person who will step in as parent in the event that both parents die, after being appointed by a judge. If you die without putting your choices in writing, the judge will choose from the pool of your family and friends without any input from you.

• **General Durable Power of Attorney:** This document empowers the person you appoint as your “attorney in fact” to act in your place for financial and business purposes. It may become effective immediately, and it continues in the event that you become incapacitated.

• **Durable Power of**

Attorney for Health Care: This document enables a person you appoint to make health care decisions for you and assist you with your personal needs in the event that you are unable to do so yourself, including choice in doctors, when and how to administer medications, and where you will live.

• **Advance Health Care Directive:** This document directs your health care providers as to what life-sustaining measures you want, or do not want, in the situation where you are terminally ill or in a permanent vegetative state. It relieves your loved ones from the burden of having to decide for you.

• **HIPAA Authorization:** This document authorizes the release of medical information (such as medical records) to your chosen individuals, notwithstanding the privacy provisions of the federal Health Insurance Portability and Accountability Act and the California Confidentiality of Medical Information Act. Such an authorization can be important, for example, if you were to have a medical event (such as a



Photo submitted

Ross E. Atkinson, left, and Carolyn Vondriska.

stroke) that required review of your medical history — your chosen individuals could access your doctors and medical records with this authorization.

While we are healthy, it is hard to envision needing documents that come into play only upon our incapacity or death. However, because none of us knows when life-altering or life-terminating events will occur, it is important while we are healthy to protect ourselves and our families for the future. Part of that protection includes obtaining those docu-

ments that best fit our individual financial and personal situations. In subsequent articles, we will address each of these documents in more detail.

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