
ESTATE PLANNING

Q22. I have a Last Will and Testament. Do I need anything else?

It is important to consider a Power of Attorney, Appointment of Health Care Representative, and a Living Will (discussed below) tailored to your wishes for an effective estate plan. In some circumstances a Living Trust may be appropriate as well, but you should discuss this with an attorney. In addition, many assets, such as IRA accounts, annuities, and other assets that have beneficiary designations will not be controlled by a Will or Living Trust and you need to ensure that your beneficiary designations are up to date.

Q23. What are Advance Directives regarding health care?

Advance Directives consist of your written instructions regarding various facets of your health care. The most common are health care power of attorney, health care agent, health care representative and living will. Connecticut also allows you to designate in writing whether you wish to make anatomical gifts of your organs or body for transplant or research purposes when you die. You may authorize the cremation of your body upon your death, and you may also designate a custodian of your remains. Effective October 1, 2006, Connecticut replaced the health care power of attorney and health care agent with a “Health Care Representative.” A Health Care Representative is a person you designate who can be responsible for all health decision matters, including your wishes regarding life support.

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Q24. What is a Power of Attorney?

A Power of Attorney (POA) is a document whereby you give someone (referred to as your “agent”) written permission to help you now or in the future regarding financial decisions. A POA is durable if it states that it will remain in effect regardless of your subsequent incapacity. Almost all POAs are durable. Connecticut has a standard POA form that covers most basic planning needs, but it does not give the agent as much authority as it should. Many attorneys, after consulting with their clients, add provisions that are

unique to the given situation so that the agent will have even more power and authority than the standard form provides. This will allow the agent to act without interruption. As an example, many POAs contain additional language enabling your agent to make gifts, if that is your wish. A POA should be crafted by an attorney to suit your individual circumstances—it is not a “one size fits all” document.

Q25. Should I have a POA?

It is a good idea to have one, especially when planning for long-term care, provided that you have complete trust in the person that you name as your agent. A POA is an extremely powerful document that your agent can use for a variety of Medicaid and estate planning needs, both foreseen and unforeseen. Once you sufficiently identify your Medicaid or Estate Planning needs, you should sign a POA as soon as possible naming a trusted individual as your agent. If there is a need to implement or continue your estate plan or gifting program after your possible incapacity, the agent can implement, under your POA, your wishes to the greatest degree possible.

Q26. What is a Living Will and Health Care Representative?

A Living Will is a document in which you can direct medical personnel to withhold or withdraw life support systems in the event of a terminal illness or a state of permanent unconsciousness (i.e., a coma). All life support systems can be withheld, including cardiopulmonary resuscitation (CPR), artificial respiration and artificial means of providing nutrition and hydration. Connecticut has a standard form for this directive and you should use this form with as little modification as possible. The Health Care Representative is the person that you authorize to implement your decisions under your Living Will when you can no longer speak for yourself and to make other health care decisions on your behalf.

Q27. Should I have a Living Will?

The whole question of “heroic measures” is very personal. If it is your desire that you not receive life support, you can verbally convey your wishes to a doctor, although it is best to put your wishes in writing by signing a Living Will, that way there is no question about what you intend. In addition, a Living Will will provide your children with clear guidance and clear conscience in acting on your behalf.

Q28. Do I need a Conservator?

A Conservator is someone who is appointed by a probate court to make health care (Conservator of the Person) and/or financial (Conservator of the Estate) decisions for an incapacitated individual. If you have named a Power of Attorney (POA) for financial matters and a Health Care Representative for health care matters, there is generally no need for a Conservator. If, however, someone refuses to deal with your POA agent or Health Care Representative, then there may be no choice except to apply to the local probate court for a conservator. Prior to seeking a conservator you should consult with an attorney because the authority of a Conservator is more limited and restrictive than that of an agent under a Power of Attorney and a POA is usually the preferred mechanism to handle an incapacitated person's affairs.