

Finishing Well

Lesson 3: Navigating the Legal World

*And you shall love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength.’ The second is this: ‘**You shall love your neighbor as yourself.**’ There is no other commandment greater than these.” Mark 12:30-31*

Estate:

- 1) Living Will (Advanced Directives)
- 2) Last Will and Testament
- 3) Power of Attorney and/or Financial Power of Attorney

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GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

- PART ONE HEALTH CARE AGENT.** *This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.*
- PART TWO TREATMENT PREFERENCES.** *This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. PART TWO will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before PART TWO becomes effective. You should talk to your family and others close to you about your treatment preferences.*
- PART THREE GUARDIANSHIP.** *This part allows you to nominate a person to be your guardian should one ever be needed.*
- PART FOUR EFFECTIVENESS AND SIGNATURES.** *This part requires your signature and the signatures of two witnesses. You must complete PART FOUR if you have filled out any other part of this form.*

- Also known as a "Living Will" this is part one of caring for your personal estate.
- An accompanying document that would be helpful in the event of extended illness is extending a "financial power of attorney" as someone who may access your assets on your behalf for financial reasons such as payment of debts, etc.
- A complete form is available in the class packet

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Legal Requirements of a Will

- Although it varies by state, a testator must be of legal age (usually 18).
- The testator must be of “**sound mind**” at the time the will is written (means having an understanding of one’s actions).
- A will is not valid if created through “**undue influence**” or if the testator is under “**duress.**”
- A will **must** be properly signed. If not the entire will is **invalid**.
- Two witnesses are required to sign in the presence of the testator thereby authenticating it is the will of the testator.

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Self Proving Affidavit

- Separate document from the actual will.
- It is best practice for a will to include a "self proving affidavit" in which the testator and witnesses swear before a notary public (or other officer of the court) that the will was signed by the testator and the witnesses.
- This is submitted to the probate court and eliminates the need for the witnesses to appear in court to testify as to the validity of the will.

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Basics of a "Will"

- “Will” is a short for “Last Will and Testament.”
- It is one of the principal documents of an estate plan.
- In a will your wishes are specified regarding property and minor children should you pass away.
- It is the document in which you name an “Executor” who is in charge of settling your affairs.

Do You Need a Will

- Yes, it is important for all adults, single or married and regardless of assets.
- Saves loved ones from uncertainty and disputes about what you would have wanted done.
- Extremely important in the event of minor children where guardianship is a possibility.

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How a "Will" Works

- The heart of a will is the “**Property Distribution**” section where the “**Testator**” (person making the will) states who should receive his/her property upon their death.
- Generally you can leave your property to anyone or in any manner you like with one exception.
- Exception: If there is a surviving spouse, depending on the state law, they are entitled to a portion of your assets designated by the specification of state law.

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Back Up Beneficiaries

Most will name backups who receive property ONLY if a primary beneficiary is not alive at the time of the testator's death.

Residuary Clause

Comprehensive wills include a “catch all” provision for any property not specifically mentioned in the will

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Executor(s) and Guardians

- Extremely important and to be discussed in advance to determine willingness to execute the required action.
- Are they:
 - Trustworthy
 - Organized
 - Nothing to be gained by serving
 - Will they have the free time to manage the process of probate or guardianship

Failure to choose an executor or guardian means the court will choose one based on the state law.

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Executor(s)

- Upon your death, even if there is a last will and testament, property isn't automatically transferred to new owners and debts will not be automatically paid.
- Executors are personal representatives of the estate.
- Works with the probate court to gather and inventory estate assets, settle estate debts and distribute assets.
- Probate process is a legal process that takes place in a probate court in the county in which the deceased lived.
- Executor works with the probate court during the process, including carrying out the terms of testator's will.
- It is **IMPORTANT** to include in the will a **waiver of the bond** for the executor, a **waiver of the inventory** and a **waiver of the annual return** to keep the involvement of the executor with the probate court to a minimum.
- The entire process is done under the supervision of the probate court and settles the financial and other obligations of the the decease and distributes property.

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Guardians

- Responsible for caring for a minor child if no parent is alive or able to do so. There are two types.
- **Personal Guardian:** Cares for and has custody of the minor child personally.
- **Property Guardian:** In charge of any property left to the minor child until the child becomes an adult or other conditions are met.
- They can be done by a single person or a guardian for each need.
- Strong will specifies both and back ups.

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Dying Without A Will

- The government basically decides everything for you through a process called “Administration.”
- The state in which the property is located designates who will receive your property.
- A court through will determine who will care for minor children.

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Do I Need An Attorney?

No. However it is **advisable** and very **helpful** particularly if:

1. You have children with special needs and you wish to set up a trust or another instrument to ensure their care.
2. You have a concern about Federal estate taxes.
3. You have a complex property distribution.

Your will should be reviewed frequently and changed to be compatible with the law of the state in which you reside, changes in beneficiaries, executors and guardians or minor children. It is important to note that property follows the state where it is located.