



# Estate Planning 101

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# Overview

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Last Will and Testament

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Durable Power of Attorney

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Health Care Power of Attorney

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Trusts



Last Will

of

# Last Will and Testament



# Defining a Last Will and Testament

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A legal declaration of a person's wishes regarding the disposal of his or her property after death

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A written instrument legally executed by which a person makes a disposition of his or her estate and which takes effect after death

# Types of Property

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## Probate

- Houses and Cars
- Bank Accounts
- Jewelry and Clothing
- Household Contents

## Non-Probate

- Life Insurance
- 401(k) and 403(b)
- IRAs
- Pensions

# Disposal of Property in a Last Will and Testament

## Specific Bequest

- A bequest of a specific item to a specific person

## Bequest of Personal Property

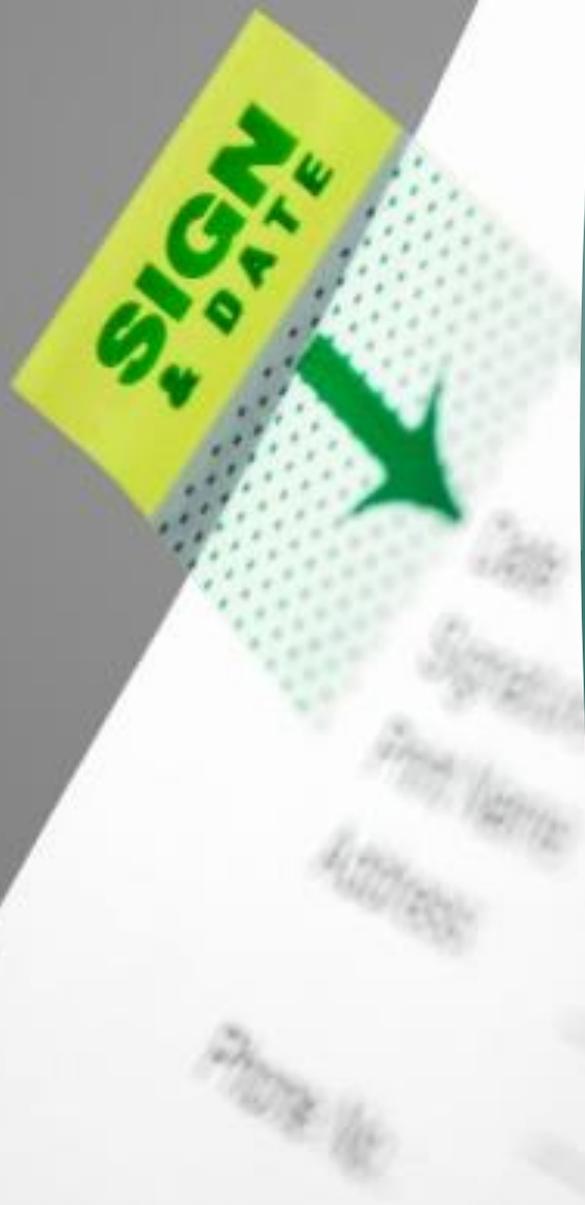
- A bequest of household and related property

## Residual Bequest

- A bequest of the remainder of the Decedent's estate, after the payment of debts, expenses, taxes, and specific bequests
- May be placed in Trust

# Appointing an Executor

- A person named by the Decedent to carry out the provisions of the Decedent's will
  - Presents the will for probate
  - Assists with the distribution of assets
  - Ensures all tax returns are filed
  - Is trusted by the Decedent





# Durable Power of Attorney

# Durable Power of Attorney

- Grants another person the authority to act as an Agent
- Effective when signed
- Remains in effect even if the you are incapacitated
- Specifically gives the Agent authority to handle your financial affairs at any time
- You can still handle your own financial affairs



# Springing Power of Attorney

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- Grants another person the authority to act as an Agent
- Only effective when you are incapacitated
- Provides your Agent authority to handle your financial affairs during incapacity
- Financial institutions may need proof of incapacity

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# Act 95 of 2014

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- Revised Pennsylvania's Power of Attorney law
- Some changes became effective July 2014, others January 2015
- Not required to have a new Power of Attorney
- Determine if Power of Attorney adheres to new requirements



# Act 95 of 2014 “Hot Powers”

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- Related to inter vivos trusts
- Make a gift
- Change rights of survivorship
- Change beneficiary designations
- Delegate authority
- Disclaim property
- Waive right to be a beneficiary of a joint and survivor annuity

# Duties of an Agent

- Act in accordance with your reasonable expectations to the extent actually known
- Keep your funds separate unless already comingled
- Act with care, competence, and diligence
- Act in good faith
- Keep a record of all transactions

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# Health Care Power of Attorney



# Health Care Power of Attorney

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- Grants a Health Care Agent the authority to make health care decisions for you based on your wishes
- Becomes operational only when you are incompetent
- Under HIPAA, a Health Care Agent can review your medical records at any time

# Health Care Agents

## Incapacity

- If you are incompetent, your Health Care Agent may make any decision that you could make

## Factors a Health Care Agent May Consider

- Your instructions
- Your preferences, values, and religious beliefs
- What is in your best interest
  - Preservation of life
  - Relief from suffering
  - Presumption that nutrition and hydration is desired

# Health Care Power of Attorney

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## Requirements

- Identify the Principal and the Health Care Agent
- State that the Health Care Agent is authorized to make health care decisions

## Optional Provisions

- Limit the authority of the Health Care Agent
- Opinions regarding life-sustaining care
- Any desire that a certain person NOT be permitted to make treatment decisions

# Health Care Representatives

- Order of Priority (if no Health Care Agent)
  - Spouse
  - Adult Child
  - Parent
  - Adult Sibling
  - Adult Grandchild
  - Adult who knows your values and preferences

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# Health Care Representatives

- Multiple Health Care Representatives
  - Any individual in the highest priority class may be a Health Care Representative
  - If more than one member of a class, the attending physician may rely on the decision of the majority of the members of that class
  - If there is a tie, no decisions will be made until the tie is broken



# Living Will

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- Outlines medical care in the event of
  - End-Stage Medical Condition
  - Permanent Unconsciousness
  - Severe Brain Damage or Brain Disease

# Medical Directions In a Living Will

- Provide health care treatment that relieves pain and provides comfort
- All life prolonging procedures should be withheld or withdrawn
  - May choose to maintain some procedures
    - CPR, ventilator, dialysis, surgery, chemotherapy, radiation, and antibiotics
  - Express desires regarding tube feeding
- Elect to be, or not be, an organ donor



# Revocable Living Trusts

# Revocable Living Trusts

- You transfer all assets to a Trust during your lifetime
  - Directs management of your assets
  - Trustee manages Trust assets
  - Governs disposition of property during your life and after your death
- Can be amended or revoked during the Settlor's life



# Advantages and Disadvantages

## Advantages

- Privacy during the estate administration process
- Rapid transfer of assets to heirs
- Management of assets if you become incapacitated or are unwilling to manage assets

## Disadvantages

- Creates inconveniences during life
- Costs of having a Trust drafted can be very high



# Common Misconceptions

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- Imperative in order to avoid probate and the court system
- Provides tax savings
- Reduces cost of estate administration



# Irrevocable Life Insurance Trusts



# Irrevocable Life Insurance Trusts

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- Irrevocable trust which owns life insurance
  - Life insurance proceeds are included in federally taxable estates
  - If an ILIT is established to own life insurance, the proceeds are not included in an estate
- Gifts made to the ILIT pay premiums
  - ILIT beneficiaries may withdrawal the gifts prior to paying premiums
- Provides liquidity to the estate



# Questions and Answers

Attorney Colleen R. Stumpf, a shareholder with the Quinn Law Firm, devotes her practice to transactional matters. Specifically, she develops estate plans for her clients and competently assists in the administration of estates of all sizes. She also provides expertise in the areas of trust administration, asset protection, elder law, and guardianship issues. Attorney Stumpf's business law practice includes entity formation for both for-profit and non-profit organizations, structural questions, general counsel, and the development of succession plans.

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