

**SHARING THE INS AND  
OUTS OF POWERS OF  
ATTORNEY, ESTATE  
PLANNING AND WILLS**

## **POWERS OF ATTORNEY**

History of POA's

- Tylenol
- NJ, FLA, MO cases

## **WISCONSIN AND OTHER STATES**

2 principal types

- Power of Attorney for Finances
- Power of Attorney for Healthcare

Wisconsin has statutory POA's

Forms on internet

Signing a Power of Attorney

- must be competent to sign -
- threshold to sign not high

All powers of attorney terminate at death of principal

Special Powers of Attorney

- Bank accounts
- Transactional
- Advance Directive to Healthcare provider (aka Living Will)
- Final remains

## **POWER OF ATTORNEY FOR HEALTHCARE**

The one document I recommend to everybody

Working Parts

Once POA is activated - agent can make decisions -

Principal decides

Scope of authority - Nursing Home, Community Based Residential Facility,  
Imminent Death, Pregnancy

Optional clauses, benefit/risk of same

Broad power - agent makes decision agent thinks you would have wanted -  
should consult with principal, if able

POAHC activation & deactivation

## **POWER OF ATTORNEY FOR FINANCES**

State statutory form

Avoid need for guardianship

No standard POA

No power to change estate plan

No liability if no fraud

As limited or broad as desired by principal

Examples of options

gifting

power of substitution

effective immediately or at time of POAHC

reporting requirements

compensation/expenses

fund trusts

exculpation

nominate guardian

## **DISADVANTAGES OF POWERS OF ATTORNEY**

POAHC

DPOA - embezzlement, self gifting, large percentage of powers are defrauded

## **ALTERNATIVES TO POWERS OF ATTORNEY**

Conservatorship

Guardianship - declaration of incompetence by Court

## **PURPOSE OF GUARDIANSHIP**

Provide assistance with financial and other affairs for incompetent person

No conveyance of Real Estate without Court order

Annual reports to Court

Guardianship is different - asking Court to declare a loved one incompetent

## **ESTATE PLANNING**

Purpose

Ensure orderly transfer of assets

Minimal costs

Avoid death taxes

Minimal cost

for preparation

for transfer after death

## **PROBATE**

Transfer of decedent's estate with Court supervision

Generally more costly

Will & Probate

Provides direction to Personal Representative (PR) as to  
guardian for minor children  
division of assets

## **WHEN WILLS NEEDED**

Trust for minor children

Appointment of guardian for minor children

Skewed distribution

Debts to estate

Personal property wishes

Blended family

Distribution of survivor's death

Divide assets to families of origin

Farm and business transfer to family

Disinherit heir

## **HOW TO AVOID PROBATE**

Trusts

establishes separate legal entity

entity survives death of principal

oversold ?

charitable remainder trusts

estate taxes

for very large estate

## **RULES OF LAW**

joint tenancy/survivorship marital property  
remainder interest & life estate - not revocable

## **BENEFICIARY DESIGNATION**

retirement funds  
life insurance  
real estate  
annuities  
marital property agreement  
and outright gifting

## **WILLS DO NOT AVOID PROBATE**

## **ASSET PRESERVATION PLANNING FOR MEDICAL ASSISTANCE** **MEDICAID IN MEDICAL ASSISTANCE**

Eligibility based on

income  
assets  
gifting  
    look back period  
    penalty period  
eligibility establishment

planning for asset preservation  
real estate divestment  
    Life estate/remainder interest  
cash gifts  
    medicaid trust

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