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Estate Planning Checkup

By Gina M. Barry, Esq.

Any estate planner will tell you that your legal house is not in order if you have not yet completed the four basic estate planning documents as discussed below.

1. *Last Will and Testament*

Your Will directs the disposition of your probate estate, which is any property held in your name alone that does not have a living designated beneficiary at the time of your passing. A Will is also necessary to designate an executor, who is the person who will carry out the administration of your estate. The provisions of a Will are generally designed to make probate easier and less expensive. By not making a Will, you forfeit your power and ability to make these designations and to direct the disposition of your property.

2. *Health Care Proxy*

In a health care proxy, you designate someone to make your health care decisions if you are incapacitated. "Living will" language, which addresses your end-of-life decisions and usually sets forth that you do not want extraordinary medical procedures to keep you alive if

treatment is futile, is normally included within the health care proxy. Your health care proxy may also address your special requests regarding your final disposition.

3. *Durable Power of Attorney*

In a durable power of attorney, you designate someone to make your financial decisions. This document is effective when signed, but is often not used unless you are incapacitated.

If you do not have a valid health care proxy and durable power of attorney and you become incapacitated, your family will need to petition the probate court to appoint a guardian or conservator to make your decisions. The court process is expensive, public and time-consuming, and may be avoided by having a health care proxy and power of attorney in effect at the time of incapacity.

4. *Homestead Declaration*

The homestead declaration, once properly recorded in the Registry of Deeds, declares your principal residence to be your homestead. The homestead declaration will protect

the equity in your home up to \$500,000 from creditors or judgments that arise after the declaration was recorded. There is a \$35 filing fee for the declaration. Note that a homestead declaration will not protect your home from nursing home costs or tax liens.

If you have not yet established the four basic documents, you should do so as soon as possible because if you lose capacity before establishing these documents, the window of opportunity to establish them at that time will be closed.

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