



August 2008

## A Final Gift of Organization

By Gina M. Barry, Esq.

One of the most important things to organize is your estate plan. Having an organized estate plan will ensure that financial matters are handled appropriately and expediently. Regardless of family size or income level, an estate plan is something every family should have. An estate plan does not have to be complicated. The four basic documents of an estate plan function quite nicely for most families.

### Last Will and Testament

Everyone needs a Will. Your Will directs the disposition of your probate estate. When you pass away, your probate estate consists of any asset that is held in your name alone that does not have a beneficiary designation.

A common misconception is that you do not need a Will if everything you own is held jointly or has a beneficiary designated. While jointly held assets normally do pass to a surviving joint owner, there must be a surviving joint owner for this plan to work. If the joint owner happens to be with you in an automobile accident and you both pass away, there may be a need to probate your estate. If you do not have a Will, your property will pass as directed by the Commonwealth rather than as directed by you.

You can also designate an executor in your Will. An executor carries out your estate. Your executor will gather your assets, pay your debts and make distribution of the remainder of your estate to your heirs. If you have minor children, you can also name a guardian to take custody of your minor children after you pass away.

### Health Care Proxy

A Health Care Proxy is a document in which you designate someone to make health care decisions for you in the event you are unable to make them for yourself. The person you have named will be able to step into your shoes and begin making decisions for you. Many people designate their spouse, with the children serving as alternates, to serve as their agent for health care decisions, but close friends and medical professionals are occasionally named as well.

A "living will" is normally included within the Health Care Proxy. The living will addresses your end-of-life decisions and sets forth that you do not want extraordinary medical procedures used to keep you alive when there is no likelihood that you will recover. Your Health Care Proxy may also address any special requests you may have with regard to your final disposition. You may wish to donate organs or be cremated. Many people think that this information should be placed in their Will, but by the time the Will is read, it is often too late to honor the wishes of the deceased.

### Durable Power of Attorney

A Durable Power of Attorney is a document in which you designate someone to make financial decisions for you. The Durable Power of Attorney is a very powerful document that gives authority to the person you designate to handle all of your financial decisions. The person you designate can sell your real estate, withdraw funds from your bank accounts and change the named beneficiaries on life insurance policies.

If you do not have a valid Health Care Proxy and Durable Power of Attorney and you become unable to handle your affairs, your family will need to petition the probate

court to appoint a guardian to make your decisions. The guardianship process is expensive as there are attorney fees as well as court fees to be paid. The guardianship process is also public and can be embarrassing as all hearings are conducted in open court. The necessity for a guardianship can easily be avoided by having both a Durable Power of Attorney and Health Care Proxy in effect at the time of incapacity.

### Homestead Declaration

The Homestead Declaration is a one-page form that, once properly recorded in the Registry of Deeds, will protect up to \$500,000 of the equity in your home from creditors or judgments that arise after the declaration is recorded. Note well that a Homestead Declaration will not protect your real estate from nursing home costs or tax liens. It will protect your real estate if you are sued and someone obtains a judgment against you, which is not uncommon in our litigious society. There is presently a \$35.00 recording fee for the declaration.

Organizing your estate plan can be one of the most important things that you do to take care of your family. With these four documents, you can help your family avoid expensive and painful legal hassles. Will your legacy be that of a disastrous mess or a neatly crafted system? Take the steps necessary to establish an estate plan, and give your family a final gift of organization.

*Gina M. Barry is a Partner with the law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of Estate and Asset*

*Protection Planning, Probate  
Administration and Litigation,  
Guardianships, Conservator-ships and*

*Residential Real Estate. Gina may be  
reached at*

*(413) 781-0560 or  
GBarry@BaconWilson.com.*