

## You're Just Four Documents From an Estate Plan

*Gina M. Barry, Esq.*



When it comes to estate planning, the old adage is true. An ounce of prevention is worth a pound of cure. Many people believe

that they do not have enough money to need an estate plan; however, the need for an estate plan is not solely related to the amount of your wealth. Meeting with an estate-planning attorney before an issue arises will enable you to avoid problems and added expense later. A basic estate plan is comprised of four legal documents, which are explained below.

### **Document One: a Last Will and Testament**

Everyone needs a will. Your will directs the disposition of your probate estate. Your probate estate consists of assets held in your name alone that do not have a beneficiary designated. If you do not have a will, your estate will pass as directed by the Commonwealth's intestacy law.

A common misconception is that you do not need a will if everything you own is held jointly or has a beneficiary designated. Of course, there must be a surviving joint owner for this plan to work. If the person whose name is on your accounts happens to be with you in an automobile accident and you both pass away simultaneously, your estate will need to be probated, as there will be no surviving joint owner.

A will is also necessary in order to designate a Personal Representative (formerly known as an Executor), who will carry out your estate. Your Personal Representative will gather your assets, pay your debts and make distribution of your estate to your beneficiaries as set forth in the will. If you have minor children, within your will, you can also designate a guardian to take custody of your minor children after you pass away. By not making a will, you forfeit your power and ability to make these designations and to direct the disposition of your property.

### **Document Two: a 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 incapacitated and unable to make your own health care decisions. If you later become unable to make your own decisions, the person you have named will be able to make decisions for you.

"Living will" language is normally included within the health care proxy. The living will language addresses your end-of-life decisions and generally sets forth that you do not want extraordinary medical procedures used to keep you alive when there is no likelihood that you will recover. For this reason, it is especially important to choose someone who will be able to honor your decision.

### **Document Three: a Durable Power of Attorney**

A durable power of attorney is a doc-

ument in which you designate someone to make financial decisions for you. This document is usually in full force and effect when it is signed, but it is expected that it will not be used unless you are unable to handle your own financial affairs.

The power of attorney is a very powerful document. It gives authority to the person you designate to handle all of your financial decisions, not just pay your bills. In most cases, the person you name will be authorized to handle your real estate, life insurance, retirement accounts, other investment accounts, bank accounts, and any other matters involving your money. As such, you should choose someone that you can trust without reservation.

### **Document Four: a 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 attachment, seizure, execution on judgment, levy or sale for the payment of debts. If a homestead declaration is not recorded, there is an automatic \$125,000 of protection. In addition to some other specific exceptions, a homestead declaration will not protect your real estate from nursing home costs or tax liens.

With these four documents, most

## You're Just Four Documents From an Estate Plan

*Gina M. Barry, Esq.*

people can help their family members or trusted companions avoid expensive and painful legal hassles related to their long-term care and their estate. Individuals with more complicated estates may require different or additional documents to fully protect their interests and their beneficiaries, but for the majority of people, an estate plan is only four documents away.

*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, Conservatorships and Residential Real Estate. Contact her: 413-781-0560 or [gbarry@baconwilson.com](mailto:gbarry@baconwilson.com).*