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Necessary Planning Documents

This is a continuation of the previous newsletter which discussed the issue of which documents are necessary in a properly designed Estate Plan. In this newsletter, we look specifically at the types of documents that are traditionally created by estate planning attorneys in a comprehensive plan. Please understand – only after careful consultation with your estate planning attorney can a determination be made as to the need or appropriateness of any specific document. However, we have briefly identified a few of the documents that are commonly used in a comprehensive estate plan below:

1. **Living Trust or Will** – Either of these documents designate who will receive your money and other property at your death. Either a will or a trust appoints a person to administer your estate at death. One primary difference is that a will normally goes through probate upon the death of the second spouse to die. A properly funded Living Trust avoids probate. The trade-off is up-front costs. A will is usually much cheaper on the front-end, but costs significantly more on the back end due to the expense of probate. A properly prepared trust based estate plan will eliminate probate at death if funded properly. It is a judgment call as to which is best for you and your family.
2. **Pour-Over Will** – For those with a trust based estate plan, this document “pours over” any assets to your trust that you forgot to put in your trust prior to your death. The problem is that any assets left out of your trust go through probate. That’s where proper funding of the trust is critical. If the trust is funded properly probate will be entirely avoided.
3. **Property Power of Attorney** – Gone are the days where we can routinely ‘get-by’ with a one-page power of attorney. Most financial institutions, brokers and others want to see the power that you are trying to enforce specifically laid out in the power of

attorney. As a result, a properly prepared power of attorney may be 20 –30 pages long. The power of attorney should be durable, that is, be effective even if you are incapacitated. It may also be springing, that is not effective until you are certified incapacitated by two physicians.

4. **Health Care Power of Attorney** - Many of you have personal experience with a loved one in a hospital during their final days. In this document you state your intentions regarding life support in the event that you are terminal and irreversible or permanently unconscious. You also appoint a loved one (and a back-up) normally called Health Care Agents, to enforce your wishes.
5. **Private Living Will** - This is the state specific form whereby the attending physician may withhold or withdraw treatment that only prolongs the process of dying. The physician will normally look to the person appointed in your Health Care Power of Attorney to learn what your stated wishes are and for direction.
6. **HIPAA Release** - Because of the new privacy laws, it is imperative that you authorize medical personnel to release your confidential medical information to certain family members.

Summary – It is critical to meet with a qualified estate-planning attorney to have your estate plan properly prepared and implemented. Avoid do-it-yourself kits or those off the internet. What you have worked for a lifetime is at stake!

This information is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney. For other general information, including elder law links to other topics of interest, go to our web-site at <http://www.arkelderlaw.com>