

The Alert

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DO YOU NEED A WILL? LIVING WILL? POWER OF ATTORNEY? TRUST?

Should you have a Will? A Living Will? A Durable Power of Attorney for Health Care? A General Durable Power of Attorney for financial affairs? A Living Trust?

These terms can be very confusing. Knowing the difference is important since each of these documents has a different purpose.

This article will try to explain what each document is. It is not meant to give advice for any particular situation. Instead, it is intended to provide general information to the majority of our readers who have modest amounts of property.

What Is a Will?

A Will is a legal document that becomes effective only after it is admitted to Probate Court after a person dies.

The Will states who gets the property of the person who died (the decedent). It appoints an executor to handle the affairs of the estate of the decedent and to see that the expressed

wishes of the decedent are carried out.

The estate of the decedent is the property that he or she owned at the time of death.

A Will covers such things as a house and land or other property you may own, including money in the bank, jewelry, a car, furniture and other household goods.

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Copy Your Wallets Contents

What if your wallet or credit card case is lost or stolen?

Or what if you became a victim of fraud because someone stole your identity?

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Raise Is Coming

If you get Social Security benefits, your payment will increase by 1.4% in January 2003.

If you get SSI, you will get your raise beginning December 31.

Monthly Medicare premiums for 2003 will increase by \$4.70 to \$58.70

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The Will does not cover those things that would pass to another person through some other method.

For instance, if your deed says your home is jointly owned by you and another person with a right of survivorship, your Will does not affect the transfer of the house.

A Will doesn't cover everything.

Your Will also would not affect the transfer of money from a bank account which you set up to be payable on death to some particular person.

Nor would the Will affect payment of the proceeds of an insurance policy or an IRA (individual retirement account) that designates a beneficiary.

When such property passes to another directly, it is not affected by the Will and is not part of your probate estate.

When you begin thinking about whether

you want a will or not, it is a good idea to start by making a list of all the things you own—such as your home and any other real estate, car, furniture, fine jewelry, bank accounts, investments and insurance

There is no need to list everything in your Will. But making a list will help you decide which things you want to include and will help you think about who you would want to get a particular item or asset.

Making a list also will help you review how your property is held (jointly, payable on death, etc.) and help you decide if changes are needed.

Do You Really Need A Will?

Whether you need a Will depends in large part on whether you already have arranged for everything to pass to your heirs by some other method as discussed earlier.

It may be difficult, however, to arrange

for everything to be handled that way so you may need a Will.

Not spelling out details in your Will can lead to bitter family disputes. Both a daughter and a son might think they are

likely to be required. Having a Will can avoid many inconveniences and expense.

You should remember that your Will takes effect only when you die. So if you change your mind about

If you change your mind about something, you can always change your Will.

entitled to get the car or you may forget that you promised it to both. So if the Will doesn't state which one gets it, there could be a rift in family relationships.

If you have property and decide you don't want to have a Will, state law will dictate who gets it.

For example, if you have a spouse and children, the law specifies the share of the estate each will get.

To understand how an estate is split in different circumstances, look up Section 2105.06 in the Ohio Revised Code at your library.

If there is no Will, the Court will appoint an executor and a bond is

something, you can always change your Will by making a new one.

If you make a new Will, it is important that you revoke the old Will and destroy it. Having two Wills can only cause confusion and can lead to complicated legal problems.

Don't Forget the Children

When deciding whether to have a Will or not, a consideration is whether you have minor children or are caring for grandchildren.

A Will allows you to designate a guardian to care for them and to manage whatever assets they receive in the event that both

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you and your spouse are no longer living.

It is important that you state your wishes about the person or persons you want to care for them, rather than have a family dispute over their care and force the Court to decide.

You should name an alternate guardian in case your first choice is unable or unwilling to serve.

Another thing to think about is where to store your will.

Although a new state law gives easier access to safety deposit boxes than in the past, it still may be a good idea to keep your Will elsewhere so long as it is safe.

For a small fee, you can place your Will with the Probate Court for safekeeping. But if you make a new Will, remember to take care of the old one at Probate Court.

Wherever you decide to keep your Will, make sure that your executor

or family members know where it is kept.

So What Is a Living Will?

Unlike a Will which takes effect after you die, a Living Will takes effect when you are alive and unable to make your own health care decisions and unable to tell your caregivers what you want done.

It tells your family members or friends, your doctor and the hospital what type of care you want or do not want to receive should you become terminally ill or permanently unconscious and are approaching the end of your life.

It may authorize withholding of or terminating medical procedures related to life support, including such things as use of feeding tubes, respirators and intravenous therapy.

On the other hand, a Living Will also

may specify the treatment you do want.

You may include provisions that say you **do not** want or you **do** want to receive food or water through feeding tubes or into your veins.

A Living Will never allows your doctors to stop giving you "comfort care."

They must continue to give you medical and nursing care that is aimed at making you comfortable and to relieve you from pain even if you have decided that you do not want life-sustaining treatment administered

If you had a Living Will done more than two years ago, you may want to consider updating it.

The Ohio law now allows you to include a Do Not Resuscitate (DNR) comfort care order as part of your Living Will.

The order means that

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(Continued from page 1) ... **Good Advice**

Would you remember all of the credit card and drivers license information you would need to replace them? Probably not. That's why photo copying both sides of everything in your wallet for future reference is a good idea.

If your cards are lost or stolen, to limit the damages that could occur:

- ◆ Phone to cancel your credit cards, using the numbers you photocopied.
- ◆ File a police report to prove to credit firms that you were diligent.
- ◆ Notify the three major credit reporting agencies to place a fraud alert on your name and Social Security number. Phone:

Equifax at 1-800-525-6285;

Experian at 1-888-397-3742;

Trans Union at 1-800-680-7289.

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you do not want to be revived or have cardiopulmonary resuscitation (CPR) performed on you if your heart stops beating or you stop breathing. CPR may include chest compression, drugs, electric shock or insertion of airway tubes.

Whether you choose to update your Living Will or not, your old Living Will still is good.

It's important to let others know that you have a Living Will before you become ill.

A Living Will can only be enforced if others who need to know actually know that it exists.

Give a copy to your family doctor, your family and any other persons you name in your Living Will as people who should be notified if your doctor determines that life-sustaining treatment should be withheld or withdrawn. Of course, keep a copy for yourself.

Power of Attorney for Health Care

A companion document called a Durable Power of Attorney for Health Care allows you to name a person to act on your behalf in fully making health care decisions for you if you become unable to make them for yourself.

The person you name is given the power to carry out the wishes you expressed in your Living Will, as well as to make other health care decisions.

As long as you are capable of making your own health care decisions, your Durable Power of Attorney for Health Care has no effect.

It is up to you to decide how much or how little authority you want to give to the person you designate. That person may only make health care decisions for you when the attending physician determines that you have lost the capacity to make

informed health care decisions yourself.

Your Living Will and Durable Power of Attorney for Health Care become effective as soon as you sign them in the presence of two unrelated witnesses or of a notary public.

If you have neither a Living Will or Durable Power of Attorney for Health Care, you must be permanently unconscious for 12 months or longer before your physician may stop any life-sustaining treatment.

Even then, or if you are in a terminal condition, consent to stop life-sustaining treatment must be given by those authorized by law to give it and be consistent with any expressions of your wishes made while you were able.

The decision to have or not have a Living Will or Durable Power of Attorney for Health Care is a very personal matter. You should decide only after you examine your own thoughts on the matter.

Whatever you decide, it is best to discuss your concerns with your family, a friend and a lawyer.

If you use the pre-printed forms for Living Wills and Durable Power of Attorney for Health Care that are now widely available, be sure to read them very carefully so that you are sure about what they say and what you want them to say.

If there is anything in the forms that you don't understand or want to change, make sure that you consult an attorney. Don't sign anything with which you don't agree.

Another POA

Until now we have been talking about a Durable Power of Attorney for Health Care. That is a limited power that deals **only** with health care decisions to be made for you if you are unable to make them.

A General Durable Power of Attorney (POA) is a document that gives another person (called an

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agent) the right to do things for you in your place, the same as you could do for yourself

Most people sign General Durable Powers of Attorney to have someone take care of their financial matters if they become mentally disabled.

As with all legal documents, one must be competent to give a Power of Attorney, so it is important to take care of that while you are still able to do so.

A POA may be limited by allowing your agent to do only certain things. For instance, the agent may be given the power to do your banking, but not to sell your house.

Or the POA can be very broad and give the agent the right to take control of all of your assets and do whatever the agent wants to do.

You do not lose the right to make decisions and do things yourself unless the POA document says so. If both you and your agent are able to act at the same

time, you must be sure that you each know what the other is doing.

It is important to consider before making someone your agent:

- ◆ **Who will be your agent?** Do you have someone you can really trust? We have all read stories in the newspapers about a child or relative or friend who used a POA to spend all of the assets on him or herself.
- ◆ **What do you need the agent to do?** While you want to give the agent enough power to do those things you need done, you may want to limit the powers you give so that the agent won't have access to all of your assets—those you now have or might get in the future.
- ◆ **How long and when should the agent be allowed to act?** The POA can say it ends on a certain date or state when some certain act should be done. Unless

there is an ending date, the POA continues in effect until it is revoked or until the agent dies, unless you name an alternative agent.

- ◆ **What if you become mentally incompetent?** As noted above, a mentally incompetent person cannot sign a legal document.
- ◆ **Do you really need a POA?** Think before you agree to make someone your agent if he or she is asking you to do so. Because of the risk that an agent may steal or otherwise do harm to your assets, think twice before signing a POA
- ◆ **Do you need an agent to pay your bills?** The answer is “no.” Creditors will take money from anyone. If a husband and wife have a joint account, no POA is needed to give the other spouse access to it.
- ◆ **Should you use a pre-printed POA form?** We advise against it. See a

lawyer and have one drawn up to fit your needs. If someone else is asking you to sign a POA, refuse to sign until you have a lawyer check it.

Don't let anyone talk you into signing a POA if you are not 100% comfortable with doing so

Living Trusts Aren't for All

A Trust is a legal arrangement that allows one person (the grantee) to give control of property to another person (the trustee) for the benefit of someone else (the beneficiary).

Living Trusts are trusts that take effect while the grantor is still alive. With most Living Trusts, the grantors are also the trustees and may also be the beneficiaries.

Living Trusts usually are sold to seniors as a way to avoid probate.

You need to understand that going through probate may

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not be bad. For many, it is less expensive than a trust is.

Probate is a legal process that usually involves filing a deceased person's will with the county Probate Court, taking an inventory of the property of the deceased, paying the legal debts and eventually distributing the remaining assets and property which make up the estate.

Whether or not you have a Will does not determine whether your estate has to be probated.

It is true that a properly drafted and properly executed Living Trust can avoid probate because the Trust and not the deceased owns the assets.

Many people think that a Living Trust is a way to avoid estate taxes. However, avoiding probate does not mean avoiding estate taxes. Trust assets are subject to estate tax just as probate assets are.

In Ohio, spouses generally do not pay

any state estate tax. Currently, no state taxes are charged on estates under \$338,333. Federal estate taxes are paid only on assets above \$1 million.

While probate may be costly and time consuming for large estates, for Ohio estates totaling \$35,000 or less—where the spouse gets everything and the

There are other ways to avoid probate.

estate totals \$100,000 or less—the process is faster and cheaper.

If your goal is simply to avoid probate, there are other steps you can take at much less cost.

We talked earlier about these steps such as joint and survivorship and transfer on death deeds, joint or payable on death bank accounts and naming beneficiaries on life insurance, IRA or pension benefits.

Seniors are often bombarded with ads and mail and phone solicitations inviting them to estate planning seminars and

selling Living Trusts.

However, we can't think of many instances where a Living Trust would be beneficial to seniors with low or modest incomes.

The magazine, Consumer Reports, suggests that Living Trusts are most beneficial to people with assets of more than \$500,000 or for those with complicated finances.

If you do buy a Living Trust at a seminar or in your home or somewhere other than the seller's place of business, you have three business days in which to cancel if you change your mind.

A "Cooling Off Rule" requires that during such sales, the salesperson must give you two copies of a cancellation form. Even if you don't get the cancellation form, you can cancel by letter within three days.

Some people buy trusts in the belief—sometimes mistaken—that a trust will make them eligible for Medicaid coverage if they need nursing

home care. That may not be the case.

Too, consider whether you prefer using your assets to pay for a better level of care than is available to Medicaid patients.

With respect to Living Trusts, we suggest you consult a reputable attorney or estate planner—preferably one who will not profit from preparing and selling you a trust.

Free seminars on Living Trusts are designed to sell you one and are not the best place to get useful information on the alternatives.

Self-help Living Trust kits are not usually a good idea because they are not tailored to individual needs.

Legal Aid does not do Living Trusts. However, it can help seniors with Wills, Living Wills, Durable Powers of Attorney for Health Care and General Durable Powers of Attorney. See the next page for information about how to contact us.

SENIOR CITIZEN CENTERS AND LEGAL AID OFFICES

CUYAHOGA COUNTY

For information or to make an appointment in Cuyahoga County, phone the Senior Helpline between 1 and 4:30 p.m. on Tuesday, Wednesday or Thursday at 216-861-5479.

EAST SIDE

WEST SIDE

Buckeye Senior Center
11802 Buckeye Road
216-491-8450

Maple Heights Senior Center
15901 Libby Road
216-587-5481

Lakewood Office on Aging
16024 Madison Avenue
216-521-1515

Emeritus House Senior Center
(at Indian Hills)
1554 East 193 Street
216-289-8586

Martin DePorres Center
1264 East 123 Street
216-268-3909

Metro Health Hospital
2500 Metro Health Drive
216-778-5551

Fairhill Institute
12200 Fairhill Road
216-421-1350

Murtis H. Taylor Center
13422 Kinsman Avenue
216-283-4400

Parma Senior Resource Center
7001 West Ridgewood
440-885-8155

Goodrich-Gannett Center
1368 East 55 Street
216-432-1717

Stella Walsh Recreational Center
7345 Broadway Avenue
216-441-0111

West Side Legal Aid Office
3408 Lorain Avenue
216-961-6630

Helen S. Brown Senior Center
16100 Euclid Avenue
216-761-8410

Woodland Branch
Cleveland Public Library
5806 Woodland Avenue
216-623-7109

DOWNTOWN

Downtown Legal Aid Office
1223 West Sixth Street
216-687-1900
Extension 5336
TTY: 216-696-3081

Hough Opportunity Center
8555 Hough Avenue
216-421-5400

For information or to make appointments outside Cuyahoga County phone the offices listed below:

LAKE COUNTY

Lake-Geauga Legal Aid, 8 North State Street, Painesville, OH 44077
440-352-6200 or TOLL FREE 888-808-2800

LORAIN COUNTY

The Legal Aid Society of Lorain County, 538 West Broad Street, Elyria, OH 44035
440-323-8240 or TOLL FREE 800-444-7348

ASHTABULA COUNTY

Ashtabula County Legal Aid, 121 East Walnut, Jefferson, OH 44047
440-576-8120 or TOLL FREE 866-873-9665

**The Legal Aid Society
of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113**