

ESTATE PLANNING GUIDE

2010 Edition

Free Guide Courtesy of

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Establishing a Plan for Your Family & Their Future.

- Have you planned your estate?
- Have you given it any thought?
- Have you delayed or postponed this important planning about ensuring that your family is provided for when you pass away?

As disconcerting as it may feel when you begin the process, it is never too early to think about estate planning. Most people are relieved, once they have a plan in place, knowing that their loved ones will be looked after once they are gone.

The actual process of planning for your permanent departure is not terribly complex, in most cases. Depending on the size and nature of your estate, though, some elements may require legal assistance.

Nine steps to ensure that you have taken care of your estate planning:

- 1) **Create a Will.** This is the very first thing to take care of. A will names those who inherit your property. It also indicates who you wish to be the guardian(s) of your minor children, should both parents pass away during the child(ren)'s minority.
- 2) **Make an Advance Healthcare Directive.** This is often done at the same time as drafting a will. This document indicates your wishes with regard to your healthcare should be unable to make decisions yourself. It is usually accompanied by (or incorporates) a healthcare power of attorney giving your representative the legal right to make decisions on your behalf if you can't do so.
- 3) **Create a Power of Attorney for Financial Matters.** A durable power of attorney for finances gives the person of your choice the authority to make financial decisions if you are unable to do so. However, most real estate attorneys will not accept a generic power of attorney for real estate transactions unless the power of attorney specifically identifies the property being transferred.
- 4) **Provide for your Minor Children.** Name a trusted adult to manage property that your minor children will inherit from you. This person may be the same person as the children's guardian as named in the will, or another person.
- 5) **Consider and Establish a Trust, if advisable.** A trust allows your survivors to avoid going through probate. There are many different types of trusts, applying to many different circumstances.
- 6) **Update Your Beneficiary Forms.** This is an often overlooked area and can cause a lot of problems, particularly with re-married individuals. Keep your beneficiary forms updated with all of your bank accounts, insurance policies and investment accounts, including retirement accounts.
- 7) **Protect Your Businesses.** Have a succession plan or buyout agreement in place. If you co-own a business, a buy-out agreement is usually the best option.
- 8) **Opt for Life Insurance, if appropriate.** If your children are young, if you have a mortgage or anticipate owing major debts or estate taxes upon death, consider buying enough life insurance to cover those anticipated debts and leave the survivors with the funds to carry on.
- 9) **Prepare for Final Arrangements.** Include your basic desires for post-mortem care in your will, including your preference for burial, cremation or medical donation. Consider setting up and even paying for plots, casket, urn and other funerary/memorial arrangements. Often, the survivors are taken advantage of during their duress and spend much more than you would wish or is necessary.

Creating Your Will.

A will is a document with a long, rich tradition and history. It is used to name the beneficiaries or recipients of another person's property upon death. For a will to be recognized by the State, it must be probated – go through the Probate Court. This can be time-consuming and expensive. Fortunately, Georgia probate proceedings are *relatively* brief and cost less than in most other states. Still, there are several strategies that may be utilized to render the process less burdensome. Avoiding probate is a common goal for estate planning efforts, which is why other elements of estate planning will be discussed.

Generally, if you do not own much property and do not anticipate any death tax liability, a basic will can address your wishes quite well. As you acquire more property, you may wish to expand your will and estate planning to cover the additional acquisitions.

In Georgia, any person age 14 or over can draft a will for themselves. For married couples, each spouse needs to make a separate will. Unmarried couples, especially, should have wills that designate each other as beneficiaries, as the state will generally not recognize the survivor as an heir.

At a minimum, a will should:

- a) Leave your property to the person(s) and/or organizations of your choice.
- b) Name an executor, the person designated to ensure that the terms of your will are carried out.
- c) Name a guardian to care for your minor children, if any.
- d) Name an agent (usually a conservator) to manage the property inherited by your by your minor children.

Legal Requirements:

Electronic wills are not currently recognized by any state, nor are those recorded in either audio or video formats. Such media can be used to supplement a will, but in order to be valid, a will must be printed, signed and witnessed. Georgia requires the signatures of two witnesses, a notarization and an affidavit of authenticity to presume that a will is valid on its face. Otherwise, the Probate Court must go through an arduous authentication proceeding.

Some states, including Georgia, will recognize a holographic will (a will written entirely by hand) by the testator. Such a will should be written in the handwriting of the person making the will and signed, preferably witnessed. Courts are invariably more suspect of handwritten wills than of those containing the normal formalities.

There is no legal requirement that an attorney draw up a will, though this option is always better than “winging it” or simply finding a form on the internet. While you can easily find an online source that prepares wills for \$59 or \$99, or while you may participate in a pre-paid legal program that offers \$99 wills, remember – **you usually get what you pay**

for. An attorney generally charges at least \$200 per hour. You may presume that for \$99, a legal assistant has merely taken a standard template and filled in your name(s). There is no customization of any kind in such a will. Particularly if you use an internet source, there is no guarantee that the will meets your state's legal requirements.

If you can afford it, it is always better to have a local attorney prepare estate planning documents. The cost may vary considerably, depending on the attorney (and his office overhead costs), so shop around. Interview the attorneys over the phone. Find out their exact procedures. Do you get a free initial consultation? Do they charge a flat fee or an hourly rate? Does that attorney normally include any other estate planning documents? Do you have to arrange for witnesses and a notary or is an execution appointment included in the charge? Do they offer any discounts for certain affiliations, such as Kiwanis, Rotary, church groups, etc.?

Advance Healthcare Directives

Most of us don't spend a great deal of time contemplating what would happen if we became unable to make our own medical decisions. However, failing to plan in this regard can leave incredibly important decisions in the hands of medical providers or even judges.

An Advance Healthcare Directive ("AHD"), formerly known as a Living Will, is a legal document allowing you to specify what treatment you wish to receive in the event of a serious injury or illness. It spells out the care you want if you can't make decisions for yourself. An AHD almost always includes statements about your wishes regarding whether you want your life artificially prolonged if there is no hope of recovery or a cure. You can clearly define the means and procedures you do or do not want used. This document expresses your desires to the doctors, effectively telling them when to "back off" and let you die.

A properly prepared AHD will incorporate a healthcare power of attorney, which gives authority to another person, usually a family member, to make healthcare decisions on your behalf. This person is generally empowered to make **all medical decisions** leading up to the end of life, but typically has no power to make an "end of life" decision because those are covered in the AHD itself.

Laws covering the right to die vary from state-to-state and usually require specific language be used. Many health care facilities will provide fill-in-the-blank forms that use the state required language. However, there is little, if any, flexibility for customizing the form for your desires or needs.

A Do Not Resuscitate (DNR) Order alerts medical personnel that you do not wish to receive CPR. DNR orders sometimes supplement other healthcare directives; sometimes they are included.

Healthcare documents usually take effect when your doctor determines that you lack the capacity to make your own decisions. This normally means that you do not understand the nature and consequences of the choices available to you, and/or you are not able to communicate your wishes effectively. Basically, if you are so sick or injured that you can't articulate your wishes, your healthcare documents take effect immediately.

Some states allow you to "hand over" the authority to manage your health care without the involvement of a doctor. This does not give your agent the authority to override you. You can revoke their authority, provided that you have the capacity.

Unless you revoke your documents, your written healthcare wishes remain in effect so long as you live. A divorce has no effect on the validity of your AHD. Although some states terminate an ex-spouses authority to make healthcare decisions, Georgia does not. So, if you get divorced, you may want to seriously consider updating your AHD if it names your spouse as your agent.

Many AHDs will also include a specific release for protected medical information. Healthcare providers are normally vigilant about protecting a patient's information, sometimes to the extreme. A medical information release authorizes the care providers to release your medical information to your agent, thus giving them a full picture of your condition. In turn, this allows your agent to make a well informed decision on your behalf.

Finally, a properly prepared AHD will provide post-mortem instructions. These may include whether you wish to donate organs, your preference for burial or cremation, etc.

General Durable Financial Power of Attorney

A Power of Attorney is a legal document giving someone you choose, your attorney-in-fact (“AIF”), the power to act in your place. The person making the Power of Attorney and giving the authority to act is known as the Principal.

There are basically three types of power of attorney: Healthcare Power of Attorney; General Financial Power of Attorney; Specific Power of Attorney. The AIF will be legally permitted to take care of your important matters if you are unable to do so.

Taking the time to create a Power of Attorney (“POA”) is well worth the effort. Without a POA, if you become unable to take care of your affairs, your family may have to go to court to get legal authority to act on your behalf.

As we have already discussed Healthcare Powers of Attorney as they relate to Advance Healthcare Directives, let us direct our attention to Financial Powers of Attorney. A Financial POA gives your agent the authority to handle financial transactions for you. Some POAs are quite simple and are limited to single transactions or a limited time frame. For example, closing a real estate transaction normally requires the use of a Specific Power of Attorney which clearly dictates the conditions under which the AIF may sign for the Principal and limits the AIF’s authority to the transaction involving the subject property.

For estate planning purposes, a financial power of attorney is designed to let someone else, usually a spouse, manage all of your financial affairs for an unspecified length of time in the event that you are unable to do so. Your AIF can handle simple tasks such as going through your mail, paying bills, and depositing checks into your bank accounts. They may also handle more complex things such as managing your retirement accounts, making investments or filing your tax returns.

Your AIF need not be a financial expert, but it should be someone in whom you have complete trust. A huge helping of common sense and organization is a good idea. If need be, your agent can hire professionals (accountants, attorneys, etc.) to help them out and pay them out of your assets.

Most people name a spouse, partner, relative or closing friend as their agent. Your healthcare agent does not have to agree with your wishes, but they must respect your right to get the kind of medical treatment you want and are committed to following through on what YOU WANT, not necessarily what they think you should have. Your financial AIF should have a similar commitment to managing your financial affairs.

Providing for Minor Children

Minor children (under 18 in Georgia) must have a guardian appointed, either by your will or by the Court, who will be responsible for raising them until they reach adulthood. Additionally, minors are limited in the type of property they may take title to or convey. For example, a minor who has inherited real estate may not deed that property to anyone. Only adults have the legal capacity to sign a deed. You can provide for your children in your will by setting up a gift under the Uniform Transfers to Minors Act and naming a custodian to manage the property until the child reaches a particular age. The *guardian* named in the will does not automatically become the *custodian* of the children's inherited property, though it is often a good idea to have the same person handle both duties. However, you must specify this in your will. To avoid complications, make sure that you and your spouse's wills name the same guardian(s) and custodian(s), respectively.

Another method for providing for minor children is to use your will to set up one or more trusts. You can create a trust for each child to include any property they inherit. Your will should name a trustee to manage that property until the child reaches an age that YOU specify. You can also set up one trust to manage the property of all your minor children, normally called a "pot trust." In this case, the trustee will decide what each child needs over the life of the trust and will allocate trust resources accordingly.

Trusts

A trust is a property transfer method that does not require probate upon your death. With a trust, you can transfer most or all of your property to your beneficiaries without the time and expenses attached to court proceedings.

A *living trust* is a trust you create while you're alive, as opposed to one created at your death. One person (the trustee) holds legal title to property for the benefit of another person or persons (the beneficiary). You can be the trustee of your own living trust, keeping full control over all property held in trust while you are alive.

A trust is not a substitute for a will. Your will is the document that distributes property that you don't transfer to yourself as trustee. If you don't have a will, any property not transferred into the trust or other probate-avoiding instrument will go to your closest relatives, in an order determined by state law, as applied by the Probate Court. The Court may not decide to distribute property as you would prefer. To cover all bases, you can include a clause in the will to specify an heir to all of the property you haven't left to a specific beneficiary.

A living trust can address some of your health care concerns, specifically those dealing with management of assets if you become unable to do so. With a revocable living trust naming yourself as trustee, you retain complete control over trust assets in the trust as long as you are mentally and physically able. If you become permanently disabled or incapacitated, the trust becomes irrevocable and the named successor trustee will take over management of assets according to the trust provisions.

The formation of any kind of trust requires a variety of paperwork. You will require a document establishing the trust. Additionally, you will need paperwork transferring property into the trust. For example, for your house to be put into the trust, you must execute a deed transferring ownership to the trust and to you, as trustee. This paperwork can be tedious and any asset not specifically transferred into the trust, regardless of your intent to include it in the trust, does not get covered by the trust's protections.

There are different types of trusts for different purposes. These purposes include avoiding probate, reducing estate taxes or setting up long term property management.

- **Irrevocable Trust** – can provide credit protection for beneficiaries as well as tax savings. The content of an irrevocable trust cannot be altered.
- **Testamentary Trust** – goes into effect at the time of death and helps control asset management and distribution. Provisions are incorporated into the will, and it accompanies the will through the probate proceedings.

- **Bypass Trust or Credit Shelter Trust** – allows you to bypass your spouse’s estate while allowing your spouse to receive income from the trust. Can reduce or eliminate federal taxes by maximizing federal deductions and credits.
- **Generation-Skipping Trust** – transfers property to second-generation beneficiaries without the trust proceeds becoming part of the direct offspring’s estates.
- **Charitable Annuity Trust or Unitrust** – allows you to donate to an irrevocable trust and retain income during your lifetime. Upon death, assets are transferred to the designated charity, thus avoiding estate taxes.

Other Aspects of Trusts.

A simple living trust may avoid probate, but it has no effect on taxes. If estate taxes are an issue, there are more complicated living trusts that can greatly reduce the estate tax burden. In an A/B trust (also called a credit shelter trust, exemption trust, marital life estate trust, and marital bypass trust), each spouse leaves property in trust to the other spouse for life and then to the children. This type of trust can save hundreds of thousands of dollars in estate taxes.

A will is legally added to the public record when probate starts, along with all other documents related to the probate, such as asset inventory, lists of debts, etc. On the other hand, there is no legal requirement for making the terms of a living trust public.

A living trust doesn’t protect you from creditors. Any creditor who wins a lawsuit against you can go after trust property – the same as if you owned it in your own name. After your death, all your property, including that held in a living trust is subject to your lawful debts. Theoretically, creditors can go after your heirs. While ownership of real estate is in the public record and creditors can find out who inherited real estate, it can be harder for them to find out who inherited other property in the trust (because the trust document is not made public).

Updating Beneficiary Forms

Upon the opening of almost every new account, whether it is a bank account, investment account or insurance policy, you are required to name a beneficiary to whom the account property or proceeds are payable upon your death. Most married couples name their spouses as the *primary beneficiary* and their child(ren) as the secondary or *contingent beneficiary*. This latter person receives the property if the primary beneficiary has already died when the principal passes away.

Problems often arise with these designations because of two main reasons: 1) People forget who they named as beneficiaries; and 2) Situations change. For example, many people do not remember to change the beneficiaries on their life insurance when they get divorced. In most cases, an ex-husband who remarries would not want his ex-wife to get his life insurance proceeds, but it happens. As life insurance proceeds made payable to a person fall *outside of the estate*, their disposition is NOT controlled by the will.

It is always a good idea to periodically review your beneficiaries. This is a little time-consuming, to be sure. However, it is well worth the effort.

For investment accounts, you should contact your financial advisor. He or she can usually find the information for you very quickly. Your insurance companies can do the same for your policies. For bank accounts, you will most likely need to visit your branch.

Who should you name as beneficiaries? In most cases, married couples should list each other as the primary beneficiaries. If they have minor children, they may want to consider naming their respective estates as contingent beneficiaries. This would bring the proceeds into the estate, thus allowing the Executor or Trustee to manage that property according to the terms of the will.

Protect Your Businesses.

Depending on the type of business entity you may have, creditors may be able to come after the business assets upon your death. Sole Proprietorships and General Partnerships are particularly vulnerable in this regard.

It is always a smart idea to start a new business already having your exit strategy in mind. However, this ideal is almost never realized.

Begin planning now for how you intend to wrap up your business dealings while you're alive and, alternatively, how to give your survivors the tools to dispose of the business upon your death.

This is a highly complex area and you should consult your tax professionals as well as your business attorney when developing your wrapping-up strategies.

Life Insurance

Life insurance is not necessarily a part of every person's estate plan, but it can be useful, particularly for parents of young children and for caregivers who support a disabled adult or child. Life insurance can also supply immediate cash at death that can defray debts and funeral expenses.

To help you determine whether life insurance makes sense for you, give some thought to these questions in the context of your death:

- How many people depend on you financially? If the answer is “none,” stop here. You probably don't need it. If you have substantial credit debt, though, you may want to get just enough insurance to cover those debts. Otherwise, your heirs may get saddled with some unexpected burdens.
- How much money would be needed for dependents' living expenses?
- How much time do your dependents need to become self-sufficient?
- Is your estate likely to owe significant debt and/or taxes?
- How much money will be immediately available from your estate to take care of dependents' immediate needs?
- How long will it take for your property to be available to your inheritors?

The answers to these questions can give you a ballpark idea of how much money would be needed to replace the income you currently provide and to defray expenses related to your death. From there, you can decide if life insurance is a good option and, if so, what kind of insurance to get.

If estate tax is your concern, you need to understand that life insurance proceeds are part of the *taxable* estate only if the deceased is the *owner* of the policy. If someone else owns the policy, the proceeds are not included. Therefore, if you want to avoid federal estate tax, consider transferring the ownership of your life insurance policy to someone else. You can transfer ownership to any adult or to a business entity, including the policy beneficiary, or you can create an irrevocable life insurance trust and transfer policy ownership to it. Keep in mind that property you leave to your spouse, including insurance proceeds, is not subject to estate taxes. Your life insurance proceeds would be taxed only if the beneficiaries are someone other than your spouse.

Be careful with your transfers. The IRS rules state (today, anyway) that gifts of life insurance policies made within three years of death are disallowed for federal estate tax purposes. Also, the IRS considers a deceased person who kept certain controls over a

transferred life insurance policy to still be the owner. Specifically, the IRS would still consider you the policy owner if you can legally:

- Change or name beneficiaries of the policy;
- Borrow against the policy or cash it in;
- Cancel the policy; or
- Decide how payments will be made to the beneficiary.

It's pretty easy to transfer policy ownership to someone else. So, why bother with a trust? You may not have someone you want to transfer to, or you want to continue to have legal control over the policy. It may be too risky to have the policy owned by someone else – they may not pay the premiums, or they may cash the policy in before you die. A trust can reduce those risks.

Final Arrangements

It is natural for most of us to see to final arrangements when dealing with wills, trusts, insurance and other estate planning elements. Stipulating your final arrangements will spare family and loved ones a great deal of unnecessary, additional stress at the time of your death.

What kind of funeral do you want? They can be simple or lavish. They are influenced by religious and cultural traditions, costs and personal preferences. You can help your loved ones avoid a potentially overwhelming number of decisions and high costs by recording your wishes for final arrangements as part of your will.

Here is a summary of typical funeral service choices that will help you think about what you want. You will likely need to conduct further research before including your wishes in your will.

- **Full-Service Funeral.** This is the “traditional” funeral and generally includes the services of a funeral home. It is also usually the most expensive type of funeral, costing around \$15,000.00. Elements include: visitation with the family at the funeral home with the casket present; private family viewing time; a service in a church or at the funeral home; and a graveside ceremony for burial of the body or the interment of cremated remains.
- **Direct Disposition.** This type of funeral involves taking the body from the place of death directly to the place of burial. A graveside or memorial service may be conducted immediately or at a later time. This is less expensive than a traditional funeral.
- **Cremation.** With cremation, the body is placed in a container and taken to a crematory, where it is reduced to ashes. These ashes, sometimes called “cremains,” may be stored in some kind of receptacle or be otherwise dealt with by a loved one. Cremation usually costs less than a full-service funeral. A memorial service may accompany a scattering of ashes, or occur separately, which will add to the costs.
- **Memorial Service.** A memorial service is usually held soon after a cremation or burial. It can be held anywhere. This option is usually less expensive than a full-service funeral, if a funeral home is not involved in the proceedings. The service may follow the lines of a traditional funeral service or may reflect different traditions.
- **Do-It-Yourself.** Many families are taking more responsibility for their loved ones at the time of death and home funerals, which prevailed for many years in our culture, are coming back into practice. Costs are usually minimal, and those who have been involved with such funerals have found them therapeutic and meaningful. State laws may impact your wishes for this kind of arrangement, so it is good to conduct thorough research before stipulating this as your preferred method or burial.

Bequeathal of your body to a medical school is an alternative to cremation or burial. Many medical schools value this kind of bequest for teaching or research purposes. It is important to have a written agreement with the medical school that covers the bequest. Also, the circumstances of your death may render your body unacceptable for teaching purposes, so be sure to stipulate a preferred alternative arrangement in your will.

Another option, organ donation, is often seen as a valued “last service” to society. In this instance, the receiving organization may return the body to the survivors for disposition following the removal of the donated organs.

Estate Tax Basics

In 2008, each person had a \$2 million exemption from federal estate taxes when they die, up to \$3.5 million in 2009 (with a one-year repeal of the tax for 2010). Therefore, if you have substantial assets, it would behoove your family for you to die in 2010. However, that being overly morbid, just remember that if your net taxable estate is worth less than \$2 million, your estate will not be subject to estate taxes. The Congress and the IRS love to make adjustments and changes to these thresholds, so be vigilant and double-check the current thresholds every so often. Additional exemptions from federal tax include any property, regardless of value, that is left to a spouse, as well as any property left for legitimate charitable purposes.

As noted above, in 2010 the estate tax is repealed for one year. As strange as it sounds, in 2011 the estate tax is due to return, with the exemption lowered to \$1 million dollars.

The federal estate tax rate slated for 2011 and beyond is 55%. States levy estate taxes, but they are less significant. Together these taxes are often called “death taxes.” If you have homes in two states and one state has death taxes, you might want to make your official residence the state without such taxes.

One way to avoid or reduce estate taxes is to give away property during your lifetime. This does more than just save on taxes. At this time, you can make an unlimited number of \$13,000 gifts of cash or other property each year, tax-free, as long as no individual recipient receives more than \$13,000 from you in a calendar year. If you left the same amount at your death and it was subject to estate tax, your recipients would see their gifts shrink by at least 39%. All gifts you make to your spouse are tax-free, provided that they are a U.S. citizen.

Couples may combine their annual exclusions, meaning that they can give away \$26,000 worth of property tax-free per recipient per year. In fact, even if only one spouse makes a gift, it's considered to have been made by both spouses, if they both consented to the gift. To make the most of this annual exemption, keep in mind that it is based upon a calendar year. For example, if a single mother wants to give her son \$20,000 and gives him \$10,000 in December and \$10,000 in January, both gifts are tax free. But giving him the entire amount in one month would only exempt \$13,000, leaving the remaining \$7,000 taxable as a gift.

Your IRA is subject to estate tax when you die. Your beneficiaries will pay income tax as the assets are distributed from the IRA. There is no way to get an IRA out of your estate before you die, except by taking the assets out of the IRA, paying ordinary income tax, and giving the money away.

Other ways to avoid or minimize estate or death taxes.

- An A/B Trust – A married couple leaves their property in trust for their kids, with the surviving spouse having the right to use it for life. This makes the taxable estate for Spouse #2 half the size that it would be if the entire property were left just to the surviving spouse.
- A QTIP Trust – This allows couples to postpone estate taxes until the second spouse dies.
- Charitable Trusts – Giving sizable gifts to a tax-exempt charity.
- Life Insurance Trusts – These allow you to eliminate life insurance proceeds from your estate.

Conclusion

There is a misperception that only rich people need an estate plan. The truth is that we all need a plan, regardless of the size of our estate. An estate plan sees to the care of minor children, distributes personal property and financial assets, and makes your financial and healthcare wishes known if you become incapacitated.

Estate planning can be used to prevent against future litigation. You can include family members in a discussion about plans for transferring assets in the future.

You can make a will or a living trust on your own, but consider hiring a lawyer if you have questions about your situation or if you have a challenging estate planning issue that a basic will or living trust just won't address. You may want to hire a lawyer if:

- You have questions about your will or other options for leaving your property.
- You expect to leave a large amount of assets and they may be subject to estate or death taxes unless you do some tax planning and set things up properly.
- You want to make complex plans, such as leaving your house in trust to your spouse until they die and then passing it to children from a previous marriage.
- You are a small business owner and have questions about the rights of surviving co-owners.
- You must make arrangements for long-term care of an incapacitated or disabled child or adult.
- You fear someone may contest your will (e.g. fraud, claiming you were unduly influenced, or stating that you weren't of sound mind when you signed.)

Estate Planning Glossary:

A/B Trust – A Revocable Living Trust for married couples. Two trusts (A and B) are set up when spouse #1 dies that divide the couple's estate. This helps maximum avoidance of federal estate taxes.

Accumulation Trust – A trust that accumulates income instead of paying income out to the beneficiaries every year. Also known as a complex trust.

Administrator – The person named by the court to manage a probate estate in the absence of a will.

Advance Healthcare Directive – A legal document indicating a person's preferences as to the type and level of healthcare and/or life support that person wishes to receive in the event that they are unable to communicate their desires. It is often coupled with a Power of Attorney for Healthcare.

Affidavit of Survivorship – A sworn written statement that verifies the identity of the survivor in a property ownership relationship.

Charitable Remainder Trust – A trust that donates large amounts of property or money to a charity to gain a tax advantage. The donor reserves the right to use the trust property during their lifetime or other period, after which the property is awarded to the named charity.

Codicil – An amendment to a will.

Conservator – A person legally responsible for the management of

property and/or money owned by a minor or incompetent person.

Contingent Beneficiary – The “back up” beneficiary named in a legal document. This person receives the property or proceeds if the Primary Beneficiary has already died.

Death Taxes – State level taxes levied upon the property of a deceased person. Same as Estate Taxes when at the federal level.

Disposition – The parting with or giving away of property.

Durable Financial Power of Attorney – A legal document used by an individual granting another person the authority to handle their financial affairs.

Durable Power of Attorney for Healthcare – A legal document used by an individual granting another person the authority to handle matters related to their healthcare.

Escheat – A legal term describing the transfer or property ownership to the state government when there are no legal heirs.

Estate Taxes – Taxes that apply to transfer of property in the case of death. Usually used in reference to the federal tax rather than that levied by state government.

Executor – The person named by a will to manage a decedent's estate.

Family Trust – Same as Living Trust.

General Power of Attorney – A legal document granting one person full legal authority to act on behalf of another. The scope of the document can be broadly or narrowly defined. Generally, it expires when the principal dies or becomes incompetent.

Grantor – The person who establishes a trust.

Guardian – A person given the responsibility by the Court for managing the affairs of a minor child or a person who is legally incompetent. Also known as a Guardian-ad-litem.

Holographic Will – A handwritten will.

Incidents of Ownership – Management control over a trust.

Incompetency – A state in which the principal is unable to understand the nature and consequences of their decisions.

Independent Trustee – A trustee who is unrelated to the grantor and the trust's beneficiaries (e.g. attorneys, banks, corporations).

Inheritance Tax – A tax imposed upon the transfer of property from a deceased person's estate. Usually refers to state-levied taxes.

Intestate Succession – The order of persons to inherit property distributed by a state court in the absence of a will.

Irrevocable Trust – A trust that cannot be changed or canceled once it is established.

Joint Ownership – The situation where more than one person owns a piece of property.

Joint Tenancy with Rights of Survivorship – The situation where more than one person owns a piece of property, each simultaneously owning 100%. At the death of one joint tenant, their share immediately transfers to the survivor(s) *outside of the estate*.

Living Trust – A type of revocable trust used to avoid probate and allow management of assets after the death of the grantor.

Living Will – A legal document defining a person's right to die and demonstrating their preferences as to the type and level of life support they wish to receive. Georgia has statutorily replaced Living Wills with Advance Healthcare Directives.

Minor – A child who is not old enough to legally govern their affairs, usually someone under the age of 18.

Net Taxable Estate – The value of an estate upon which the Federal Estate Tax is levied.

Pay on Death (POD) Account – A bank account designed to avoid probate where the bank agrees to pay the balance of the account, upon the death of the account holder, to the person(s) named to receive the account.

Personal Property – Property other than real estate. For example: Vehicles, bank accounts, equipment, furniture, securities, stocks, firearms.

Personal Representative – A more modern term for the Executor of an estate.

Pot Trust – A trust created in a will that includes all minor children, as opposed to having individual trusts set up for each child.

Power of Attorney – A legal document set up by an individual granting another person the authority to handle all or some of their affairs.

Primary Beneficiary – The person named as the main recipient of property. In a trust situation, it is the person for whose benefit the trust is established. In a will, it is the person who receives most of the decedent's property, e.g. a spouse. For insurance, it is the first person to receive insurance proceeds. In the case of investment accounts, it is the person who receives the proceeds in the event the account holder is deceased.

Probate – The legal process that allows transfer of a deceased person's property, whether or not they leave a will.

Probate Court – The arm of the judicial system overseeing probate, the settlement of intestate and testate estates, as well as other matters, including wedding and firearms licenses.

Probate Fees – Fees paid to the professionals who handle probate for an estate.

Quitclaim Deed – A document that transfers a person's interest in a piece of real estate without providing the guarantees that are inherent to a Warranty Deed.

Revocable Trust – A trust that can be amended or revoked by the grantor.

Self-Proving Will – A will that has been legally witnessed, notarized and that states that all of the proper formalities of the will's execution have been complied with.

Simple Trust – A trust with terms requiring the trust to pay out all of its income.

Taxable Estate – The portion of an estate subject to federal and state taxes.

Testamentary Trust – a trust created by the terms of a will.

Trust – an entity created by the execution of a trust document, in which property is held for the benefit of another.

Trustee – The person or institution that manages the trust property under the terms of a trust.

Warranty Deed – A document that transfers a person's interest in a piece of real property and guarantees to the recipients that the title is free of encumbrances.

Will – A legal document stating the intentions of a deceased person concerning the distribution and management of their affairs upon death.