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**Estate Planning**

The essential estate planning documents are a Last Will and Testament, a Living Will and Power of Attorney. Why a Will, Living Will and Power of Attorney?

A **Last Will and Testament** (Will) allows for the orderly distribution of your estate. It allows you to appoint an administrator (personal representative/executor) without costly court intervention (CCI). In most state you can appoint or name a Guardian for minor children without CCI. A Will ca also be used to establish trusts (See Trusts).

In the US, you generally can not disinherit a spouse in your Will. However, most states will allow the distribution of your estate under state statues. This prevents a spouse from becoming “a ward of the state” and qualifying for state benefits when resources would otherwise be available. To eliminate this election, you must have a validly executed ante-nuptual agreement. The public policy against disinheritance does not apply to children or grandchildren. To disinherit your children or grandchildren, you must use special language to make this clear.

Subject to the above limitation, a competent individual can bequeath his or her estate to anyone or anything. There are many different ways to plan for the distribution of your estate and only an Attorney can review all of the possibilities, and the reasons for and against each with you.

We are aware that many international practitioners encourage the use of a separate “American Will” to dispose of american property. A great deal of mischief can ensue from the use of multiple wills to effectuate an estate scheme. Separate wills are a technical violation of US law, which these practitioners expect the local Surrogate to simply “blink away.” It is a bad practice that should be resisted. Existing processes for ancillary administration of a foreign will are not so cumbersome as to recommend the “American Will” as an alternative.

We insist on only one original signed, witnessed and notarized Will. We do this so that there can be no questions that the Will is “The Will.” If people have an European Will and an American Will, or codicils to either Will, any one of these documents can be misplaced or intentionally destroyed, thus defeating the Will your intent.

In any case where an individual has assets in more than one country, an attorney with international credentials (and an international network) should be consulted.

A **Living Will** sometimes referred to as a Health Care Power of Attorney allows for the designation of a Health Care Representative (HCR) or Health Care Proxy. New York, New Jersey and least 20 other state will allow you or your HCR to refuse further invasive medical treatment. A Physician's Order for Life-Sustaining Treatment (POLST) allows for a Do No Resuscitate Order (DNR) to be pre-approved by you or your HCR and a medical doctor. This very powerful document can only be signed by your HCR if that power is included in your Living Will.

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Under NJ law only one person can serve as HCR at a time. If you appoint multiple HCRs, only one may act at a time and they cannot operate by committee. This assures a clear line of communication between medical personnel and your HCR.

A **General Durable Power of Attorney** (POA) is an extremely powerful document which allows your agent to engage on your behalf in any financial transaction which you could undertake. A POA is only valid during the life of the principal. Some attorneys will prepare a POA with “springing powers.” Springing Powers are only effective on the disability of the principal. At BAF we do not prepare springing powers as you would need a third party to testify to the disability. This would interfere with the valid exercise of the power.

Some states, like New York, have designated the wording of powers of attorney by statute. An attorney can explain the proper use of these powers and their effect on other designations you may have made.

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