

# TYING A NET

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There are several examples used throughout this book. Many are somewhat extreme in nature, and many attempt to create a humorous image to add some levity to this serious topic. While these are examples of what can happen in real life, no offense or similarities to any individual experiences are intended. Words in **different font** can be found in the Glossary at the end.

**The contents of this booklet are not intended to be used as legal advice. They are general statements, offered as guidelines and a starting place. They are intended to present issues for consideration. Any action taken in regards to planning for disability and/or death should involve consultation with an attorney to determine what is appropriate for your circumstances.**

## **FORWARD**

by Monte Y. Pescador

I first met Rebecca in college back in 1989. We both attended Willamette University, Salem, Oregon, as undergraduates and already she was set on becoming a lawyer. She didn't want it for the money or fame like a lot of others in our class, but had grown up wanting to help people like her own family in Cortez, Colorado. They aren't the poorest folks, but they've had their share of problems where a lawyer could have been helpful but was just not affordable or practical.

After Rebecca finished her bachelors in Economics and both law and management graduate schools at Willamette University, she returned to Colorado and began her practice in 2001. Soon she was taking on all kinds of cases from parental to corporate rights, some tax and constitutional law, and others that I, as a person who's not a lawyer, couldn't even understand.

And she's stuck to what she's wanted to do, making the practice of law affordable for everyone. The Boulder Bar Association gave her an award for her high number of pro bono hours in a year. Clients come with little to offer and she takes what payments she can afford to take to get them the help they need. We're not quite to the point of the comic book legend Daredevil, taking on cases for basketballs and fluke, but sometimes it feels that way. Still, I couldn't be more proud of her and I try to keep the bills paid while she goes about being my superhero.

Yet we were both struck in the heart by the majority of her cases and what has become her specialty, family law. We've seen divorces in marriages that never should have been and in marriages that never should have broken. And we've seen kids get stuck in the middle many times regardless of the parents' intentions. In the end, family law is about family and the best interests of the family as a whole. In my humble opinion, Rebecca has been able to keep to that as a standard for what clients she takes and how she goes about helping them.

It wasn't until I was over 30 that we realized we needed a Will. I was going in for delicate neck surgery and many questions came to mind. We don't yet have kids, but what if we did? What if we both weren't around anymore? What about our dogs, Neyuki and Tamako, or our cat, Aki? What about my godchild, Haley?

Take her message to heart. Wills shouldn't be about money or "assets" as much as they are about what's getting passed on from the heart. We've lived through our share of storms in this life and, God willing, we'll weather the rest of them until retirement.

But you never know. And that's where "I'll think about it" may be too late.

Rebecca continues her practice in Northglenn, Colorado, and she still every-so-often gets calls from as far as Utah as well. Her motivation is families in need. And I am very proud to call her my wife.

## BIOGRAPHY



I am Rebecca Pescador and have been a licensed attorney in Colorado since 2001. During that time, I have practiced law in a wide variety of cases, including family law, estate planning, contract law, landlord tenant law, and even a little tax law. Most of my cases are in the family law area, including divorces, allocation of parental rights, modifications of child support and parenting time, guardianships, conservatorships, and adoptions. However, my favorite area of law to practice remains estate planning.

I received my education at Willamette University in Salem, Oregon graduating from Willamette University College of Liberal Arts in 1993 with a BA in Economics and a minor in Japanese language. From there I went on to graduate from a joint degree program in 1998 from Willamette College of Law and Willamette's Atkinson School of Management with a Juris Doctorate, a Master of Management (which is the accredited equivalent of a Master of Business Administration combined with a Master of Public Administration), and a Certificate of Dispute Resolution.

My approach to the practice of law leads to doing things not often done by other attorneys. I firmly believe that everyone should have access to the law, regardless of income. Pro bono cases make up at least 10% of my case load. I often take very small retainers and work with clients to set up affordable payment plans.

I am a Colorado native, transplanted from the western slope. My background and the influences of rural life on the western slope have played a substantial role in shaping my approach to the law. The law is a tool to help everyone, not a weapon or shield to be wielded only by those who can "afford" it. The law can also best be used in most situations as a ward against trouble for relatively little cost. This is particularly true since the practice of law, contrary to popular belief, is not about justice; it is about enforcing the law. I do my best to make sure my clients get as close to justice as possible through enforcement of the law.

## INTRODUCTION

### Why Does Estate Planning Matter?

You already know on at least an intuitive level that it does matter; you are reading this. Most people don't think it through to truly understand it though; it seems morbid and forces us to face our own mortality. This doesn't change the fact that every one of us will die, and we do not know when or how. We also do not know if it will be sudden or if we will find ourselves disabled for a time first. For that matter, we do not know that we will not find ourselves simply disabled.

Perhaps you recall the fireman in metro Denver who had a sudden onset of a disease a couple of years ago, which left him unable to move or communicate; a perfectly healthy man, in the prime of life. Suddenly, unexpectedly, he was silenced. We don't know if he left instructions for his wife, or what he wanted for his young child. Imagine for a moment that this happened to you. Would your family know what to do? Do they know:

- Your wishes in regards to life support?
- What you want done with your earthly goods?
- What to do with your children?
- What to do with your pets?

In our uncertain world, there are a great many ways to end up in such a position, from disease, to accidents, to natural disasters. Each of us hopes and prays it never happens to us, but so did the people it happened to.

Some planning now can save your loved ones a great deal of stress and heart-ache. If you leave instructions, they know exactly what you want done. There is no need to fight and fuss about it. They can take your written instructions to the court, the bank, and whomever else they may need to interact with. Much like a safety net, it gives them something to hang on to and to support them in their time of need.

### What Does It Require?

The most difficult thing it requires is making up your mind to do it, and following through. Though that may sound trite, it is true. Much like public speaking (the greatest fear most people have), it is easier for most to say than to do.

It is a very good idea to get professionals involved in preparing your **estate** plan. An attorney can make sure you write it in a way that the court will honor, and that will insure that your wishes are followed to the letter. An accountant or CPA can help you determine any tax or investment benefits that you might get by structuring things in a particular way. The time and money spent with these professionals will be well worth it, both in your peace of mind in knowing that you have left a plan which will be followed and which will benefit your loved

ones, and in preventing drawn out and expensive court battles after you are gone as loved ones struggle through their grief to figure out what you really wanted.

### Can I Do It?

Absolutely. Anyone can do it.

It is a myth that a **Will** is only useful if you have a lot of things, houses, cars, boats, antiques, etc. Sometimes, a **Will** is most useful when the most valuable thing you have is a collection of tourist cups from all of your travels. Each loved one has memories associated with those cups, many with certain cups which were bought on trips they were with you on. Then there are the memories of sitting on your patio drinking tea or coffee with you, and the particular cups each of you always reached for. Most people are pretty clear with their loved ones about what they want done with the things that are valuable in monetary terms. It's those daily things that we don't think about until someone is gone, and we experience a flood of memory and emotion when we touch them, that often cause the biggest feuds. So am I saying your **Will** should list out each one of the four dozen tourist cups? Maybe. It depends on your family. Having a **Will** that says who gets to have things can make a big difference in how hard they fight over those cups.

A **Will** is also very useful if you have children under 18, or if you have pets. Who will take care of them? Where will they go? Who will finish raising the children? How will they be supported? These are questions that are easily handled in a **Will**. You can even write your **Will** so that the children can only use the funds from that \$100,000 life insurance policy to go to college, or so that they can only tap into it after they are 30 and have lived on their own for a while, and then only for a house or for a fund for the grandchildren's education. Perhaps you have a parrot that is much younger than you. Will you leave some money to care for the parrot? Or is there a parrot rescue organization you know that will help the parrot find a good home (perhaps because no one else in the family really has space for it)?

It is also a myth that a **Will** can only give a list of people a list of items. That is certainly the primary function. Do you know whether there will be any estate taxes when you die? Will there be capital gains tax assessed when the house is sold? How will these taxes be paid? These will be paid out of the **estate**, but there are different ways to do it and each has a different impact on what is left for the **heirs**. A **Will** can also be a place to leave last messages. It can be a place to say, "I love you dearly, and I know how much you wanted the china cabinet, but you don't have a place to put it and Dottie needs it for the dishes Grandma gave her. Please don't think I love you less." It can also be a place to say, "I love you, and I'm sure you're upset that I left your share in a **trust**. You must understand, I love you and want you to clean up your life first, so that you will truly enjoy your share, rather than fritter it away." A **Will** can also be used to create the carrot on the stick for that loved one that can't quite seem to get motivated to fill out the college application, by leaving instructions that they get it but only for college tuition.

## PREPARATIONS

This section will give you a guideline for the things you need to do to make proper preparations. Please remember, it is important to speak with an attorney to ensure that your preparations meet the needs of your particular situation. There are many variables to be addressed, and there is no one surefire combination for any group of people.

1. One preparation that applies to both situations is to gather all of your important papers into one place. A list of suggested papers to include can be found at the end of this booklet. It doesn't matter where that place is, as long as it is safe and you can get to it. Note that a safe deposit box may not be the best place, as it may be difficult for your **heirs** to access it after you have passed on until after it is needed. Consider a fire-proof safe in your home or the home of your chosen representative, or even with the lawyer who prepared the documents. Also, tell someone where to find these papers. Remember, you want to choose someone trustworthy to know where to get the papers. You may want to consider choosing someone who is local so they can begin following your wishes immediately. The person designated to get the papers does not have to be the same person you want to handle your affairs during your incapacity or after your death. However, you want to make sure that the person to handle your affairs can gain access to your papers.
2. Make sure that any business you are involved in as an owner has a plan for the death and/or disability of an owner in its organizational documents.
  - a. If it is a corporation, can the shares be sold to just anyone or will they be sold to the other shareholders? Or perhaps the shares can be transferred to **heirs**. How are the shares to be valued?
  - b. If it is a partnership, most formations will require that the business be dissolved. How will value be provided to your **heirs** and do the remaining partners want a plan to reform the business? What will happen during a partner's incapacity?

Each form of business has different legal options and limitations for this situation. It is best if the plan is laid out before it is ever needed. There are many options which are not available after the need arises.

### For Incapacity

1. First, you need to write a **Living Will**. You can get these forms at hospitals, as well as from attorneys. Most hospitals and doctors want this document to be dated within one year of the date they are treating you, so you will want to update it regularly. This is a fairly simple form to fill out, generally with checkboxes to tell medical personnel how to care for you under different situations. Do you want life support continued? Under what conditions? What quality of life issues are important to you?

Most people have strong feelings about these things. Most people will say, “my family knows what I want.” Unfortunately, in this day and age, that is often not enough, particularly if you want life support stopped under certain circumstances. Medical personnel are often not comfortable relying on the word of family members for certain actions, and are reasonably afraid of being sued if someone feels they made the wrong call. It is also very difficult for family members. They may disagree with your choice, or have personal reasons to wrestle with the decision. Having clear, written instructions from you removes the uncertainty for all involved. Make sure to put a copy with your important papers, and give your primary physician a copy for your medical file.

2. Write a **Durable Power of Attorney**. A standard **Power of Attorney** WILL NOT work. Though it doesn't seem to make much sense, a standard **Power of Attorney** terminates when you become incapacitated and unable to direct your own affairs. A **Durable Power of Attorney** specifically continues until death. These are often written in such a way that they do not go into effect unless and until you become incapacitated.

Choose the person to give this power to carefully. Obviously it should be someone you trust. It should also be someone who:

- Can handle business affairs well. This person will be handling all of your money, your belongings, and decisions.
- Is not easily overwhelmed.
- Is not easily intimidated; there may be times when this person will need to push through bureaucracy or handle family disputes.
- Has enough time in his/her own life to take on this added responsibility.
- Communicates well, particularly with you. This will limit the opportunity for any misunderstanding. Ideally, it should also be someone who communicates well with those closest to you, as they will likely be working with these people from time to time.

Finally, it should be someone whose judgment you trust. Remember, we cannot plan for every contingency. There is a very real possibility that this person may have to make some decisions in situations where your wishes in a particular situation are not clear.

3. It is also highly recommended that you choose a backup person for each responsibility. What if you're incapacitated as a result of an accident? What if one of these people is with you and is unable to take on the responsibility? Also, remember that these documents are being written in hopes that they will not be used any time soon, if ever. Things change over time. Having another person listed as a backup is one more strand in the safety net, to be sure that your plan protects and aids your loved ones the way you intend.

Remember that you can have different people do different things; the person who is ideal for one task may be the last person you'd want handling another. (Brother Ernie, the accountant and confirmed bachelor, may be perfect to oversee your financial affairs, but

may be the last person you'd want raising your children.) It can also be a way to make things less overwhelming. It all depends on your situation; some people do have someone in their life who can and will do all of these tasks and do them well. Consider what needs to be taken care of in your life and who you want to handle it, and then prepare documents to implement those decisions.

You should also talk to the people you want to have handle things for you. Make sure your brother Joe is comfortable making medical decisions for you. Make sure your sister Edna is comfortable handling your financial affairs. Make sure Cousin Sara, whom you've instructed to care for your great dane, Sweetie, during your incapacity, is willing and able to do so. Make sure your friend Ken and his wife are willing and able to take in your 10 children during your incapacity. All of this planning does you no good if, when you need it, everyone (or anyone) you've chosen declines to accept the responsibilities you've chosen for them. Besides, if they know this responsibility has been designated to them, they will be better prepared to take it on if/when the need should arise.

4. You may want to consider creating a **trust**. It is entirely dependent on your individual circumstances whether it would be appropriate or beneficial. An attorney can tell you whether it would be beneficial in your circumstances, and if so, whether it would be more beneficial to have a **trust** that starts while you are still living (an **intervivos trust**), or one that only takes effect after your death (**testamentary trust**).

A **trust** which is created to go into effect while you are still alive can be used to manage the transition of your belongings and/or money, or a portion of them. It is most often used when people want to pass things to the next generation under certain conditions. Reasons for attaching the conditions can vary widely; to protect someone's disability benefits, to prevent someone from spending it all at once or on an addiction, to encourage someone to get an education, to let someone else decide whether money should be spent on the thing the **beneficiary** wants, etc. A **trust** that takes effect after your death can be one part of your total estate plan, or in some cases can be your entire estate plan.

If you decide you would like to have a **trust** set up, you will need to decide who will be the **Trustee**. This should be someone with some good business sense, in part because the **trust** will probably have to file tax returns and may have other documents to prepare and submit from time to time, depending on what its terms are. The **Trustee** can (and probably should) hire assistance for these tasks, but needs to understand enough to properly oversee them. There are also professionals who will act as the **trustee** for a fee. If you choose to go with a professional, check their references and be sure they are bonded.

5. There are also less formal instructions you may want to seriously consider leaving. I call them a Pet Manual and a Child Manual, respectively.

*The Pet Manual.* Do you have a pet? Who will care for the pet when you are gone? Will they remember that your 60 pound giant standard poodle can't sleep at night without his teddy bear? Will they remember that Petunia the goldfish likes a lettuce leaf once a week? Do they know that your vet has you watching Fifi the cat for signs of hip trouble and that she cannot go up and down stairs? There are dozens of little things we know about our pets, and that we do for our pets. Most of them are so much part of our routine that we never really think about it.

When someone else is caring for your pets, all of these are important.

- Some things, like a special diet for medical reasons, are very important for the person to know.
- Who is your regular vet? This is important even if they will be changing vets, say because they live in a different city or state.
- Does your pet have any health conditions?
- What do you feed your pet? Is any part of that due to a medical condition? Is your pet allergic to any particular food?
- Does Fifi have her own medicine cabinet? For what conditions?

They also need to know comfort things.

- Perhaps the dog will only sleep in a kennel.
- Include training words and signals. Did you teach Thumper to do tricks and to come, in Swahili? Did you teach Butch the Cockatoo to land on top of your head and tap your forehead three times when you say, "Can you hear me now?"
- What reward do you use when the pet does what you ask?
- Let the new person know what special treats or activities your pet enjoys.

The pet will be stressed out too, and often there are small comforts they look to us for that the new caretaker will be glad to do if he or she knows what they are. A short checklist of items to consider including can be found at the end of this booklet. This is also a helpful document to prepare if you feel that none of your friends or family is able to take in your pet, and that your pet should go to a new home, through a shelter, rescue society, or straight sale/give away. There is a good chance such a document can be passed along with the pet.

*The Child Manual.* The Child Manual is along the same lines, but with even more information. Clearly, you want the guardian of your children to have all of the contact information for their doctors, information on any known medical conditions or allergies, any medications or dietary restrictions they may be on, and how to comfort the child. However, with a child, there are additional considerations.

There is the education of the child, and any special learning needs.

- Does Joe have an IEP? Is Susie being watched for signs of dyslexia?

There is the religious training of the child.

- Do you attend a particular church?
- Do you want your child raised in a particular faith?
- Do you want your child not raised in a particular faith, but encouraged to explore so he or she can choose a faith as an adult?

What other things are you concerned about?

- What about activities or sports?
- What about non-essential medical treatment or cosmetic procedures?
- What about piercings or tattoos?
- Do you want Bobby to have to earn his first car?
- What about dating?

The list can go on and on, but the idea is that you want the guardian to be in a position to get off on a good foot with your children, and to have a good outline of what values you most want instilled in your children.

You also want to give the guardian the tools to make their learning curve with your children as short as possible, rather than have your children (and the guardian) suffer through the trials and errors. You want to give the guardian the tools to comfort your children as much as possible, and to avoid unnecessary conflicts. A checklist of items to consider including can be found at the end of this booklet. It is by no means exhaustive; if something else occurs to you, by all means add it!

6. You may also have someone else who is dependent on you; a parent or spouse, or a disabled adult child. If that person cannot live alone and must have care, take appropriate steps to plan for how that person will be cared for.
- Will he go to a nursing home? Is there another family member who can take over?
  - Keep in mind the level of your authority. Is she staying with you voluntarily? Or do you have a legal guardianship over her? If you have a legal guardianship, then you need to make arrangements, not unlike for a child, for passing that duty to someone else. If she is with you voluntarily, you cannot dictate where she will go; you can only make suggestions.
  - Discuss it with family members, and with the dependent person if possible. It can be a great comfort to the dependent person to know what will happen to him if something happens to you.

It is certainly acceptable to make recommendations in your estate plan. It is easier on everyone, including the dependent, to know that there is a plan in place if something happens to you. A manual, similar to that discussed above for children and pets, may help to make this person's life easier as well.

There are also some financial planning tools available to help ease the burden of the cost of long term care. A good financial planner can help you determine what options might be best for you. Perhaps you have some investments that could be put into an annuity, turning your asset into income where it will count differently when applying for assistance. Perhaps purchasing long-term care insurance makes sense for you. Again, there is no single solution that is best.

### For Death

1. The first and most obvious thing here is to write a **Will**. This will designate who is to make sure that your affairs are handled properly, the bills are paid, and that each loved one gets what you have in mind for him or her. It will also determine how your belongings will be handled.
  - o Will they be divided up among loved ones?
  - o Will loved ones get a trinket or two with the rest going to your favorite charity?
  - o Will it all go into a **trust** for your children or grandchildren?
  - o Will it all go into a **trust** to be sure that Fifi continues to be able to eat filet mignon for dinner for the rest of her life?

It can designate who will become the new caretakers of your pets and nominate who will become the guardian for your children. It is important to remember that the court does not have to place your children with that person, but it nearly always does unless there is some very good reason not to (declines to do so, died last week, charged with domestic violence, etc.).

Depending on your situation, you may wish to create a **trust** as well. You can either create a separate **trust**, or describe the **trust** within the **Will**. The same reasons and concerns about who will be **trustee** apply as for an **intervivos trust**. (See discussion on trusts in the previous section.) An attorney will be able to assist you in determining what is best for your situation.

There are many “self-help” techniques in use as well. The most common is to put someone else’s name on your bank accounts, on the deed to your home, on the title to your car, etc. This is effective in ensuring a smooth transfer of these assets to the person whose name is on each one.

### **HOWEVER**

**It important to use extreme caution when using these techniques, and to think them over very carefully, and more than once.**

Once someone’s name is on your house, you can’t change your mind and take it off.

**EXAMPLE:** If you **Quit Claim** it to your son Rob, it is no longer your house legally. Rob can now sell the house and keep all the money, leaving you homeless and penniless. Rob can kick you out and move in himself. Rob can donate it to his favorite charity, his girlfriend Liza. There is nothing you can do. But we all know Rob is a good boy and devoted to you and would never do something like that.

But what happens when Rob marries Liza? No problem, Rob is still in charge. Now Liza loses her marbles and becomes a complete druggie. She divorces Rob and succeeds in taking the house from him in the divorce. Now you are at the mercy of your drugged out and irrationally angry ex-daughter-in-law. She now owns the house, so she can kick you out. Or she can demand rent from you and kick you out if you refuse.

This is an extreme example, but it is also taken from real life. If you wish to do this, you would be well advised to seek legal assistance to retain a life estate in the house. With a life estate, even if Liza sells it to her dealer Brutus, you continue to have the right to live in the house so long as you are alive.

Once someone's name is on your bank account, they can withdraw money from it, even if they didn't put any in. Also, keep in mind that while the interest in the money in that account is not technically transferrable in a divorce, the person may have to spend some money proving that none of the money in that account belongs to them so that they don't have to come up with money to compensate an ex-spouse for a portion of that money as a marital asset.

2. You also want to take most of the steps set forth above for disability, especially things like the child and pet manuals. It should also include the considerations of whether a **trust** might be appropriate.

3. Consider whether you want to donate any organs. If so, be sure your driver's license or ID says so. Also, be sure it is mentioned in your **living will**. It is generally a good idea to tell family members and your primary physician too.

## WHAT TO DO IN THE EVENT OF INCAPACITY

This is written in terms that imply the incapacity came on suddenly, such as through an accident. However, the same instructions apply if the incapacity comes on slowly, such as through Alzheimer's. The only practical difference is that many of these issues can be addressed over a longer period of time and with less haste. There may also be more options if they can be set up in advance. It is also written to the person who is handling the incapacitated person's affairs.

### Immediate Actions

The person who is designated under the **Living Will** needs to be contacted immediately and that person needs to insure that the wishes expressed in the **Living Will** are being followed.

The person who has the **Durable Power of Attorney** needs to be contacted next. If no such person has been designated, a next of kin or close friend needs to find the papers. It needs to be determined what the wishes are of the person who is incapacitated. Aside from the **Living Will**, the health insurance papers are going to be the most valuable at this point in time.

There are of course the practical aspects as well.

- Are there children to attend to?
  - Do the children have appointments or activities that need to be addressed?
- Are there pets to feed and water?
- Is there a spouse or dependent that needs assistance or care?

Needless to say, in these first hours, aside from the care of the incapacitated person, the important thing is that children, pets, or any other dependent is taken care of. If the person's wishes are known and can be implemented immediately, that is preferable. The coming days will be trying enough without juggling children and pets around.

Then there are the person's belongings to attend to.

- Does the person's home need to be closed up and locked or winterized?
- Does a vehicle need to be retrieved? (Perhaps from the Picky-Packy parking lot if the person had a heart attack when she saw the price of milk or from a roadside or a towing company lot if there was an accident)?
- Are there any appointments that need to be cancelled or rescheduled?
- Is there an employer to notify?
- Is the person self employed or responsible for a business?
  - Is there someone else who can take over management?
  - If not, will the business be closed temporarily? Who will make it happen? Will customers be told why or how long to expect the business to be closed? What about suppliers? What about employees?

- What family members need to be notified?

### Secondary Actions

The extent to which the following actions are taken will depend in part on whether the person is expected to recover soon (within a few weeks) or if it is expected to take much longer. Clearly, common sense will guide you.

The person with the **Durable Power of Attorney** needs to go through the papers and determine what things need to be managed.

- What bills need to get paid?
- Are any insurance premiums or vehicle registrations coming due?
- Is there a co-pay for the hospital stay or the medication? If so, does the person have the funds in the bank to pay them now?
- Does the person have an income? Is it automatically deposited or do you need to watch the mail?
- Does the person have any disability benefits under an insurance policy that need to be applied for (don't forget to check for any of those policies on credit card debts, mortgages, etc.)?
- Are the children (or any dependent adults) insured through the incapacitated person's policy?
  - Is that policy through an employer?
    - If so, how long will it continue without further input? Once that time has passed, can coverage be continued with the incapacitated person's resources?
    - If it can't be continued, what other options are available?
  - If it is not through an employer, can it still be continued with the incapacitated person's resources?
    - If not, what other options are available?
- What other responsibilities does the person have that need to be covered? For example, if the person is an officer in a fraternal organization or other club, organizer of a fundraiser, deacon at a church, scouting or 4-H leader, etc, the organization or group needs to be contacted so that they can cover those responsibilities and/or cancel meetings as needed.
- Was the person incapacitated as a result of an accident, or otherwise through the fault of someone else? If so, seek legal counsel immediately to determine what needs to be done to protect the person's rights.
- Does the person need to get qualified for Medicaid? If so, will they qualify easily or do they need to spend down their assets first? Consult a professional for assistance in planning for qualification; there are several things that can be done before you file your application, though many cannot be done after filing the application. A professional can help you determine which options are best in your situation.

Once you have made these determinations, you can begin taking action. You will need to make copies of the **Durable Power of Attorney**. You will need several:

- The bank will require one to let you have access to the accounts and safe deposit boxes.
- If there are investments and the **Durable Power of Attorney** gives you power over them, the brokerage will require a copy.
- Insurance companies will require a copy in order to let you manage any policies or claims.
- If it is appropriate to sell the house, you will need a copy for the real estate company.
- If you have to deal with schools or daycares for the children, they will require a copy.
- Keep an extra copy or two and have it handy any time you go to attend to any business affairs on behalf of the incapacitated person. In this litigious society, more and more people want proof that they acted properly, which in this case means that they had more than just your word that you had the authority to act on behalf of the incapacitated person.

If the incapacity is expected to be long-term, you will have larger questions to consider.

- Do assets need to be liquidated to pay for care? If so, do they need to be liquidated right away, or can they wait until the market is good?
- Will the incapacitated person remain in the hospital, or will he or she need to be transferred to a nursing home or other facility? If a transfer is required, it is your job to be involved in that decision, as well as make any necessary financial arrangements. Unless you also hold the medical Power of Attorney, you will be working closely with that person as well in making decisions about the ongoing care.

Do the children have another parent who is still alive and not incapacitated (perhaps the other parent is an ex-spouse or someone the person was never married to)? If so, you need to contact that person. Legally, that person is first in line to take over caring for the children, unless there is a protection or restraining order, or some other order to the contrary. However, it is possible that that person is not presently able or willing to take on that responsibility. You have the obligation to initiate communication. Your assistance will likely be required in handling any transfers between schools and doctors as well. Did the incapacitated person leave any kind of **Power of Attorney** over the children for the person chosen to care for the children? If not, you will need to assist that person in going to court and getting a guardianship over the children so that the person will have the necessary legal authority to deal with schools, daycares, doctors, and other service providers. It may also be appropriate to consider whether the children might be entitled to any assistance due to the parent's incapacity. If so, you need to handle these applications. Depending on the circumstances, it may be recommended for the children to get some form of counseling. If so, you will need to work with the guardian in determining if and how such counseling will occur.

Also, with long-term incapacity, you need to remember that your first duty is to the incapacitated person. Therefore, if you've looked over the **Will** and found that things that were

given to specific people under the **Will** need to be sold for the person's care, your duty is to sell them. The **Will** can be sorted out later. If a **Will** references a specific item which the person does not own at the time of death, that gift is simply ignored. A well written **Will** also offers guidance to the **Personal Administrator** to handle such a situation, whether the person should be given something else (usually a portion of the **residual estate**) or not.

Is someone checking the mail or does it need to be forwarded? Is the house empty? If so, is the thermostat at a low level? Does the house need to be winterized? Does the yard need to be tended? Are the children and pets where the person wanted them? Do the children or the pets need anything that it would be appropriate to pay for out of the incapacitated person's accounts?

Is there an **intervivos trust**? Do you need to coordinate with the **trustee** on anything? If the incapacitated person was the **trustee**, make sure the alternate is notified and takes over. If there is no alternate, or the alternate cannot, seek legal counsel. You need to take appropriate steps (at least partially defined within the **trust** document) to ensure that a **trustee** is put in place to administer the **trust**.

Set yourself up a record keeping system. No matter if they are notes in a spiral notebook or a file on your computer (back up often!), you need a place to keep track of what you do. Be diligent about keeping it up to date as you go. You have the legal responsibility to act on someone else's behalf. This means that if anyone ever questions any of your actions, you need to have very clear records to show the court that you acted properly. Ideally, this will be more than a mere check register. For anything that did not directly pay a debt of the incapacitated person, you want to have some notes explaining why that payment was appropriate.

- For example, perhaps the person will be in a nursing home for a while, and can be wheeled around, so you buy a nice soft robe for the person to wear. It is clearly for the person's benefit, but you want to have the notes to show that you did not buy yourself a robe instead.

If you wish to purchase something that you've decided should be sold, be sure you document the fair market value of the item (i.e. what one could reasonably expect a stranger on the street to pay for it) and pay that amount. Because of your special relationship to the incapacitated person, you are not allowed to give yourself so much as a penny discount. If you are ever asked to pay out funds and you are not 100% confident that it is for the benefit of the incapacitated person (not merely what that person would want you to do, unless there are specific instructions in the **Durable Power of Attorney**), seek legal advice. It is better to pay for a bit of advice in advance and get it right than to have someone challenge you and drag you through an expensive and stressful court battle where you will have to convince the judge that you got it right.

## The Rest That Won't Take Care of Itself

If the incapacity is expected to last for quite a while, it may be appropriate to start liquidating the incapacitated person's assets. It may be appropriate to:

- Sell a car or recreational vehicle.
- Start cleaning the closets, determining which items may still be of use, and getting rid of the rest.
- Pay off certain debts and close open accounts.
- It is probably appropriate to cancel the newspaper and redirect the mail. Be sure you keep track of the dates of annual and semi-annual expenditures and be sure that you handle them on time.

For example, a tax return will likely need to be filed, at least for the year in which the person was incapacitated (and if there are children, be sure you coordinate with the guardian so the children get claimed only once – you really don't want the headache of an IRS audit in the middle of all of this).

Vehicle registration and property tax are two more such annual bills. Also figure out when insurance premiums are due and make sure they are handled appropriately and on time.

You will want to keep in touch with the person who is the acting guardian for the children. To the extent that the incapacitated person's resources are able, the children's needs should be met from those resources, unless other prior arrangements were made. This includes school supplies, clothes, activity fees, lunch money, etc.

It is also time to notify those who should know, but may not know yet. Go through the incapacitated person's address book, Christmas card list, email address list, cell phone address book, and any other place where she may have kept contact information for estranged or distant family and old friends. These will likely all be people who will be concerned when they do not hear from the incapacitated person when they expect to.

## WHAT TO DO IN THE EVENT OF DEATH

In this section, I will refer to the person who has passed away as the deceased. This is not intended to make it sound clinical or as any disrespect. It is merely used in an effort to keep clear whom I am referring to.

### Immediate Actions

The person who was told where to find the important papers needs to go and get them. If there are instructions regarding burial and funeral arrangements, these need to get into the hands of whomever is going to attend to these. If these have been purchased in advance, it will be a relatively simple matter of contacting the businesses they were purchased from and arranging dates and times. If they have not been purchased in advance, or if there are no instructions at all, then someone needs to be designated by the family and/or friends to take charge of that task.

- Will the deceased be buried or cremated?
- Where will the body or the urn rest? Is there space near the deceased's family plots?
- If the deceased will be cremated, and it is intended to scatter the ashes, who will be sure any necessary permits are obtained?

The local hospital can give you names of local mortuaries (who in turn can give you contact information for local cemeteries) if there is no guidance left by the deceased. Did the deceased ever serve in the military? If so, he or she may qualify for a military funeral and/or a military burial. The local Veterans of Foreign Wars or American Legion can help you in these determinations, as well as putting you in contact with the necessary people if the deceased qualifies for a military funeral and/or burial and you wish to pursue it.

You will need to get a copy of the Death Certificate. When you do so, be sure to get several Certified copies. You will need them in several places. The bank will want one, the insurance company will want one, the pension fund will want one, the brokerage will want one, the court will require one. There may be others who will want one as well.

The **Will** needs to be reviewed so that the **Personal Administrator** can take over. A formal reading can come later. The **Personal Administrator** needs to get the **Will** filed with the **probate** court in the county where the deceased lived (also known as "lodging the **Will**"). Obtaining legal counsel at this point is a very good idea, as the probate forms can be a bit confusing. You will need an Order from the Court called Letters, or Letters of Administration, before you can take further action with banks, insurance companies, brokerages, pension funds, etc.

There may also be the practical realities to be addressed, depending on the suddenness of the death. Are there children, adult dependents or pets to be cared for? Does the house need

to be closed up and locked? Is there a business to be managed or closed? Are there organizations that need to be notified so they can fill in any functions the deceased served?  
Secondary Actions

Now that the immediate matters have been handled, it is time to handle the actual disposition of the **estate**.

You will need to prepare an inventory of everything in the **estate** for the court. It needs to include a list of all real estate, vehicles, accounts, loans, credit cards/debts, money due to the **estate**, investments, etc. When it comes to personal property (another way of saying all the “stuff” in the house), it really depends on what you have to work with.

- Any valuable antiques, collections, guns, artwork, furs, or jewelry need to be itemized.
- If there is anything else of particular value, it should be itemized as well. You will need to list the value of each item, so appraisals may be in order.
- The rest can usually be generalized as “personal property”. Usually, you can estimate a reasonable value based on what you would expect to take in at a yard sale if you sold it all.

You are responsible for taking care of all of this property until it gets disbursed. You are not required to create Fort Knox around it, but you are required to take reasonable steps to ensure that the property is protected until it is safely delivered to the beneficiaries. This may require renting a storage unit, or may be as simple as keeping it all locked in the house.

Go through the deceased person’s papers carefully. Are they holding some position in a **trust** created by someone else? If so, you need to make sure that duty gets handed off properly. If you can’t tell from the **trust** documents whom you need to talk to, seek legal counsel promptly.

If there is a **Will**, it is time to locate each individual who is to receive something under the **Will**. Hopefully, the deceased has left you this information. If not, it’s time to play detective. Don’t worry if you find that a **beneficiary** is deceased. You will simply need to provide this information to the court. The **Will** should offer instruction as to what happens to the gift, whether it simply goes back into the residuary, goes to the **heirs** of the deceased **beneficiary**, or goes to someone else.

- Be aware that a **beneficiary** can decline to receive anything under the **Will**. There is a specific process for this, which the estate attorney can help you with, or which the individual’s attorney can help with.
- Also be aware that in many jurisdictions, spouses and minor children can make specific claims against the **estate**, even if the **Will** omits them specifically. Review the **Will** and talk to the family to determine if you need to be prepared for this issue.

If there is not a **Will**, you will be dealing with **heirs** under the statute. They can still opt out. The spouse and minor children still have the same rights to claim, which are most likely to come into play if the current spouse is not the other parent of all of the minor children.

Once you know who the beneficiaries will be, you're ready to start planning for the disbursement. **NOTE that you should not actually give anything out until the court has approved the disbursement proposal you will file.**

- If the **Will** calls for a particular item to be given to a particular individual, and that item is not in the **estate**, you simply skip that part of the **Will**. However, read the **Will** to see if it requires you to find something else to give that individual.
- If the **Will** gives "my home to Susie", don't worry if you know the deceased has owned three homes since she wrote it. The law interprets it as meaning the deceased's home at the time of her death. This is true of things like vehicles as well.

You need to deal with the debts of the **estate**. You need to gather all of the bills for the **estate**. Determine whether they can be paid from the liquid assets of the **estate**. You will need to provide the court with a list of these debts as well, and a proposal for how they will be paid.

☞ **Remember, paying the estate debts comes before gifts to beneficiaries. You may have to liquidate something in order to pay all of the bills.**

You will need to run a notice in the local paper in order to foreclose any other debts you don't know about. This will ensure that after a period of time (presently one year in Colorado), no other presently unknown creditor will be allowed to claim any money from the **estate** for debts.

While the court proceeding is the biggest part of what you will be handling, it is not the only thing you will be handling. There are all the practical aspects as well.

- Get minor children settled in with the guardian and make sure any issues that may need to be addressed are handled. Be sure the guardian has the child manual(s). Work with the guardian in regard to any insurance benefits, medical care, and other such issues. You also need to work with them to be sure the children get all of their belongings.
- Get adult dependents settled into their new locations and make sure any issues that may need to be addressed are handled. If the deceased prepared a manual for this person, be sure the new guardian (or facility) has it. Work with the guardian in regard to any insurance benefits, medical care, and other such issues. Work with the guardian to be sure the adult dependent gets all of his/her personal belongings.
- Get pets settled in with their new guardians, or sent to a shelter or rescue organization for a new home. Don't forget to be sure the pet manual travels with the pet! Be sure favorite toys and such go with the pet if possible.
- Contact any insurance provider and coordinate with designated beneficiaries to be sure they get the paperwork done and get their benefits. They will need things like a copy of the death certificate from you.

- Contact any other institution that has a designated **beneficiary** and coordinate with the **beneficiary** to be sure they get the paperwork done and get their benefits. They will need things like a copy of the death certificate from you.
- Perhaps the house or other real estate needs some care until it can be disbursed. Does it need winterized, for example? Does the yard need special care? Do you need to keep snow off of certain areas to meet city ordinances?
- The **estate** will probably have to file a tax return. It is perfectly acceptable (and advisable if the **estate** is sizable) to hire a tax preparer to prepare that return. If the deceased had a tax preparer that he usually used, it is probably a good idea to use the same preparer who is already familiar with the financial situation.

### The Rest That Won't Take Care of Itself

There are always the things that have to be taken care of, that are not part of the court proceedings or paperwork for institutions. This is by no means a comprehensive list; I'm sure you'll find at least 50 things that aren't on this list that you'll have to do. This is only intended to be a starting point.

1. Cleaning the house.
2. Turning off utilities and getting any deposits back.
3. Stopping subscriptions.
4. Forwarding the mail.
5. Selling (or otherwise appropriately disposing of) things that are not set to go to anyone in particular.
6. Shipping or otherwise delivering items to beneficiaries/heirs.
7. Writing the obituary and getting it published.
8. Contacting old friends and distant relatives to let them know (don't forget the email buddies).
9. Closing out email subscriptions and online accounts.
10. Taking calls and emails from people uncertain about how to make their donations or where to send the flowers.

## CHECKLISTS

### Decisions, Decisions, Decisions

People to choose:

- Guardian for Children
  - Alternate Guardian for Children
  - 2<sup>nd</sup> Alternate Guardian for Children
- Guardian for Pets
  - Alternate Guardian for Pets
  - 2<sup>nd</sup> Alternate Guardian for Pets
- Appointee for Living Will** (will make medical decisions)
  - Alternate **Appointee for Living Will**
  - 2<sup>nd</sup> Alternate **Appointee for Living Will**
- Appointee for Durable Power of Attorney** (will handle affairs during incapacity)
  - Alternate **Appointee for Durable Power of Attorney**
  - 2<sup>nd</sup> Alternate **Appointee for Durable Power of Attorney**
- Personal Administrator** (will oversee execution of the **Will**)
  - Alternate **Personal Administrator**
  - 2<sup>nd</sup> Alternate **Personal Administrator**
- Trustee** (will oversee the **trust**, if I have one) (Note – if I have more than one **trust**, I will need a **Trustee** for each one. It can be the same person over all of them, as long as there is no conflict between them. Consult an attorney to find out if this will work in my circumstance.)
  - Alternate **Trustee**
  - 2<sup>nd</sup> Alternate **Trustee**

## Put It On My Tab

### Pre-Paid Services to Consider

- Burial plot/**columbarium niche**
- Funeral/Memorial service
- Long-term care (if I have reason to think I might need it - consult with my health care professional for advice on whether this might be appropriate and beneficial for me, and then consult with a financial planner and/or insurance providers.)
- Financial services (Depending on my resources and circumstances, it might be appropriate or desirable to have a retainer in place with my accountant for the purpose of assisting in handling my financial affairs.)
- Legal services (It might be appropriate and/or desirable to have a retainer in place with my attorney for the purpose of assisting with any legal questions my representatives might have and for handling my **probate**.)

### Things to Consider Spending Resources Down On

- Repairs to my home (new roof, refinish hardwood floors, new linoleum, new appliances)
- Modifications to my home to accommodate new limitations (ramps, wheelchair accessible doors, bathroom remodel to create accessible shower, etc.)
- Repairs to my car (if it is still used to get me to and from my medical appointments)
- Equipment for therapy and/or mobility (shower seat, wheelchair, etc.)
- New Clothes (especially if mobility is now an issue, get clothing that is easier to put on, take off, and wear with new limitations)

## Manuals

Child Manual (this is a list of the kinds of things to include; feel free to add anything else that you think should be included). Ideally, create one for each child. If you want to do them all in one document, please be sure to clearly note what applies to which child. Update each one from time to time, particularly in regard to the medical information.

- Full legal name, any nicknames (Note if a nickname is only used by one family member so the guardian won't blunder into a serious faux pas while trying to create a good bond with the child.)
- Date of Birth, place of birth
- Pediatrician (name and contact information)
- Medical conditions (Note any that have been diagnosed, as well as any that are being investigated. Include the date of diagnosis or the date the pediatrician started investigating a condition.)
- Allergies (Include known and suspected, and note the difference.)
- Sensitivities (Your child may not be actually allergic to something (a food, sunscreen, lotion, cologne, soap, etc.), but may have a sensitivity to it that the guardian needs to know about. Be sure to include a list of symptoms that result from this sensitivity in case someone else exposes the child to the problem substance.)
- Dietary restrictions (Note with each whether it is related to a medical condition, allergy, religious diet, or just a personal preference. If it is a preference, it might be helpful to the guardian to state why you prefer it (convenience, nutritional considerations).)
- Routine Schedule (time to get up, time for bed, usual meal times)
- Daycare/School/Babysitter (Include full contact information for each of these, as applicable. If you home school, be sure to include full contact information for any assistant/teacher and/or program/curriculum you are working with. Be sure to include directions for where to find the child's current work, as well as records of past performance.)
- Activities (include contact information for each one, as well as schedules) It may also be helpful to the guardian to indicate which activities mean the most to you and to your child. Remember, there will be a lot of changes if/when this gets used. Some activities may need to be dropped; offer some guidance as to which ones are most important to keep.
- Comfort Things (This is a place to tell the guardian how to comfort the child. Favorite blankets/teddy bears, warm cookies and hot cocoa, being left alone, snuggling on a warm lap, a favorite story, etc.)
- Close friends (Give names, addresses, email addresses, and phone numbers of your child's best friends, along with their parents' names. In the changes, your child may change schools and neighborhoods. It would be a comfort to still be able to get in touch with old friends.)
- Court Orders (Do you have a parenting plan with the child's other parent? Are there any protection/restraining orders that pertain to your child? Include the case numbers, full names of all parties involved in the case, the name of the court where the order was

entered (i.e. Adams County District Court, Adams County County Court, or Denver Juvenile Court), and the terms of the order. **Ideally, make a copy of each order and attach it to this manual. HOWEVER, still list out the information specified above in case the copy of the order gets separated from the manual, so that the guardian can get another copy.)**

Pet Manual (Do one for each pet. It is unlikely that your pets will get to stay together. Also, like the Child Manual, this is a starting list. Add anything else you think should be included.)

- Name (Include the full official name if the pet is registered, as well as the name the pet responds to. Also, if your pet is registered, specify the group with which it is registered, and include its registration number. Attach a copy of the registration as well. The new guardian will need it to transfer ownership.)
- If your pet has a microchip, include the Chip information. The new guardian will need to contact the chip service and change the contact information with them.
- Age
- Veterinarian (Include full contact information for your primary veterinarian.)
- Medical Conditions (Include those diagnosed and any that are being investigated, as well as the date of the diagnosis or the date the investigation started. Also include current vaccination record.)
- Allergies (Include any known or suspected, and identify which is which.)
- Dietary Restrictions (Note if they are due to medical condition, allergy, or just preference.)
- Diet (Specify brands and quantities your pet eats. Pets do not do well with sudden changes of diet (often including between brands), and your pet will be under enough stress with the other changes.)
- Groomer (If your pet has a groomer, include full contact information. Also, if you know your pet has a particular grooming issue, it should be listed here. If the new guardian has to change groomers, she may not think to call and ask the old groomer whether Sweetie has ticklish paws or if Fifi is scared by the sound of the blow drier.)
- Training Commands (Make a list of the commands you have trained your pet with. Include descriptions (photos maybe?) of any hand signals that go with these commands. If the commands are in a foreign language, consider making a recording of you giving the commands. If you have the ability, making a video and burning it to a CD or DVD may be an ideal way to capture the words, hand signals, and for the new guardian to see how the pet responds to the commands.)
- Behavior Issues (Note any issues your pet has. Perhaps Fifi destroys the furniture if she's left alone in the house for more than an hour, or Spike can rip a cable out of the ground if a squirrel goes by, or Fluffy wets on the carpet when a stranger comes in.)
- Routine (Note where your pet is used to sleeping, what time he gets up, what time he's used to going to bed, if he's used to going for walks at a certain time, going to the dog park once a week, etc. This will at least prepare the new guardian for your pet's

behaviors, and will offer suggestions to the new guardian for helping your pet adjust more easily.)

- Activities (Is your pet in a training class or other regular activity? If so, include full contact information for the coordinator of the class or activity. The new guardian should at least let them know if the pet will not be continuing in the class or activity.)
- Comfort (Note what your pet does for comfort. Favorite toys, preferred sleeping environment, whether it likes close and frequent human contact or is more stand-offish, special treats, etc.)

## Now Where Did I Put That?

### Important Documents to Assemble

- Deeds for any and all real estate
- Titles for any vehicles, boats, RVs, ATVs, etc.
- Stock certificates
- Insurance policies
  - Health, Dental, Vision
  - Life
  - Auto
  - House
  - Payoff plans (credit cards, mortgages, etc.)
- Copies of important cards, including (but not limited to):
  - Social Security cards
    - Mine
    - Minor Children's
    - Adult dependents'
  - Passports
    - Mine
    - Minor Children's
    - Adult dependents'
  - Driver's license
  - Insurance cards
    - Mine
    - Minor Children's
    - Adult dependents'
  - Medicaid/Medicare cards
    - Mine
    - Minor Children's
    - Adult dependents'
  - Public assistance cards (food stamps, etc.)
  - ID cards for work or school, etc.
    - Mine
    - Minor Children's
    - Adult dependents'
  - Membership cards (Unions, clubs, professional and/or fraternal organizations, museums, etc.)
    - Mine
    - Minor Children's
    - Adult dependents'
- Child manual (either one for each child or one that clearly states differences for each child)

- Pet manual (preferably one for each pet – they are likely to be split up)
- Dependent adult manual
- Birth Certificate
  - o Mine
  - o Minor Children's
  - o Adult Dependent's
- Marriage Certificate
- Divorce Decree(s)
- Military Service documents (discharge papers)
  - o Mine
  - o Adult Dependent's
- List of people I want notified upon incapacity and/or death (if they don't include the same people, it might be a good idea to make 2 lists)
- Bank account information
  - o Mine
  - o Minor Children's
  - o Adult Dependent's
- Online Accounts (Paypal, any subscription sites (online games for example), online banking, bill pay services, etc.) These should include any site that has the potential for financial consequences. It may also include any newsletter sites, or group sites, where it would be courteous to notify them to take you off the list.
  - o List the website address, the username, and the password for each one
  - o Include any answers to special challenge questions
- List of people to contact for each organization or club I participate in
- Contact information for any business I am involved in, including who to speak to about handling my absence
- List of Medications and known allergies, together with copies of current prescriptions and contact information for my pharmacy
  - o Mine
  - o Minor Children's
  - o Adult Dependent's
- List of contact information for all long term debts and revolving credit accounts
  - o Utility bills (Electric, Gas, Water/Sewer, Garbage removal, Phone, Cell phone, Internet service provider, Cable or satellite TV, Satellite radio, GPS services (such as OnStar), any regular service (landscaping, mowing, house cleaning))
  - o Regular medical expenses (Oxygen, in-home care, etc.)
  - o Mortgage(s) (including home equity loans)
  - o Car Loan(s)
  - o Other vehicle Loans (boats, RVs, ATVs, etc.)
  - o Student Loan(s)
  - o Visa/MasterCard/Discover/American Express
  - o Department Store cards (JCPenney's, Sears, Macy's, Dillards, Tiffany's, Sax Fifth Avenue, etc.)

- List of contact information for any debt on which I am a co-signor or guarantor. Include both the person who is the primary borrower and the lender.
- Papers on pets (American Kennel Club, American Cat Fancier's Association, American Quarter Horse Association, etc.)
- List of subscriptions (newspapers, magazines, online services, movies by mail, etc.)
- Information for an obituary (birth date and location, date of marriage and location, dates of any military service and branch and rank at discharge, names of siblings, names of parents, name of spouse and date of death if applicable, names of children, any particular organizations or activities I would like to have mentioned and appropriate data for each (positions held, years of membership/service). If I feel up to it, go ahead and write it! Keep in mind that there may be fewer family members around and likely to be involved. Also, the younger they are (generationally speaking), the more important it will be to have this information written down for them, as they are less likely to know it.
- Copies of papers on any **trusts** I am involved in, whether as a **trustee** or **beneficiary**. If the **trust** is closed, it is not necessary.
- Contact information for any pension plan or retirement account, together with paperwork showing your account number (a statement would be ideal).
- Contact information for each of my treating physicians. Include any specialists.
- Contact information for any service professionals I use.
  - o Attorney
  - o Accountant/CPA/Tax preparer
  - o Home healthcare provider (individual or company)
- Copy of my most recent **Living Will** (mark my calendar to put a copy of the new one with my important papers each time I update it, removing the old one when I do.)
- Burial and funeral/memorial service information
  - o Instructions I may have for where I want the service, coffin preferences, who I want to preside over it, any particular requests for my service (certain singer, certain pall bearers, charity donations instead of flowers)
    - It is also a good idea to have information on any military or fraternal services I may want here, together with information on who to contact to make such arrangements. My local VFW or American Legion may be a good place to start if I don't already know who to contact.
  - o Instructions for whether I wish to be cremated
  - o Instructions for where/how I want to be buried/interred, or requests for scattering of my ashes
  - o Copies of any documents for any prepaid services or burial plot/**columbarium niche**
  - o Any requests regarding my marker/tombstone (any special message I want, what kind of marker I prefer, whether it should bear any special notations regarding military service or fraternal membership, etc.)

**PERSONAL INFORMATION**

Please use this space to fill in your own information. This will give you a great document to summarize the most important information contained in your important papers. If you keep it with them, it will be a great “cheat sheet” for those you ask to handle your affairs.

General Personal Information

Full birth name: \_\_\_\_\_

Any other names (include maiden names and prior married names) used on any legal documents: \_\_\_\_\_  
\_\_\_\_\_

Birth date: \_\_\_\_\_ Location of Birth: \_\_\_\_\_

Spouse’s name: \_\_\_\_\_

Date of Marriage: \_\_\_\_\_

Date and location of Divorce or Death (if applicable): \_\_\_\_\_  
\_\_\_\_\_

Other Spouses (with dates of marriage and death/divorce):  
\_\_\_\_\_  
\_\_\_\_\_

Children (with dates of birth and death, if applicable) (include addresses and phone numbers if the children do not live with me):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other parent(s) of any of my minor children (for any who is not currently my spouse and/or does not currently live with me – include address and phone number):

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Parents (with dates of birth and death, if applicable) (if I include step-parents, identify them as such):

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Siblings (with dates of birth and death, if applicable)

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Branch and dates of military service (include branch and rank at last discharge/retirement):

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Date of most recent **Living Will** and name and address of **Appointee** under it: \_\_\_\_\_

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Date of most recent **Will** and name and address of **Personal Representative** under it:

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Medical Information

Primary Physician (name, clinic name, address, and phone number): \_\_\_\_\_

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Secondary Physicians or Specialists (names, clinic names, addresses, and phone numbers): \_\_\_\_\_

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Primary Pharmacy (name of pharmacy, address, phone number, prescribed medications): \_\_\_\_\_

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Any diagnosed medical conditions: \_\_\_\_\_

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Any known allergies (food, medication, pollen, animal, adhesive, anesthetic, soap, etc.):

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Medical/Health Insurance (name of company, name of agent if known, address, phone number): \_\_\_\_\_

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Financial Information

Bank (include account numbers, safety deposit box numbers, address and phone number of branch you use regularly): \_\_\_\_\_

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Retirement/Pension (include full contact information for the plan administrator):

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Brokerage (include name and address of the company, together with the name of any specific broker(s) you deal with regularly): \_\_\_\_\_

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Insurance (include name and address of each insurance company, together with the name of any particular agent who handles your account. Be sure to include information for each insurance policy and specify whether it is health, vision, dental, life, auto, home, etc.):

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Burial Information

It's fine to list my preferences here, even if I haven't already paid for it. However, I need to make a note of whether it is prepaid or not.

Mortuary (include information about coffin preferences here): \_\_\_\_\_

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Cemetery (include plot information if it is prepaid): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Presiding Speaker (Pastor, Elder, Rabbi, Friend, etc.): \_\_\_\_\_

\_\_\_\_\_

Music: \_\_\_\_\_

Charity Suggestions (Some people like to have donations made to a specific charity in their name rather than to have flowers at the funeral. If I want to have this done in my name, or offer suggestions to any who might be interested, I need to list what charities/organizations I want them given to.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## GLOSSARY

NOTE: All definitions below have been written from your point of view, as someone who is taking action to plan out the handling of his/her estate.

**Appointee** – Someone you designate under a Living Will or in a Power of Attorney to be your representative. Depending on the document, they may be a general representative, able to do anything for you, or a limited representative, only able to do a specified act or acts for you.

**Beneficiary** – Any person who will receive something under a trust, Will, or who is designated to receive such things as life insurance, residual pension funds, or bank accounts. This person only has to be a recipient; there is no requirement for the person to have any blood or legal relation to you.

**Columbarium Niche** – The place where an urn is kept in a cemetery.

**Durable Power of Attorney** – A Power of Attorney which can be general or specific, which will specifically continue to be in effect (or possibly even come into effect) when you are incapacitated. It dies with you; the appointee has no authority once you die. It can be used specifically to deal with incapacity, or to deal with other matters regardless of incapacity. It will terminate on your death.

**Estate** – The legal term for all of your worldly goods and debts.

**General Power of Attorney** – A Power of Attorney which may grant the Appointee either general or specific powers. It may have a termination date specified. It will terminate on the earlier of the date specified, the date of the Grantor's incapacity, or the date of the Grantor's death.

**Grantor** – The person who has the Power of Attorney or Trust set up; the one for whom the Appointee will be acting or from whom the Trust will receive its contents.

**Heir** – Statutorily defined group of people related to the deceased by blood, marriage, or legal adoption. If there is no Will, the court will use this statute to decide who gets your worldly goods after your debts are paid. Generally speaking, the first few layers are spouse, children, parents, siblings, parents' siblings. The court will not spread it among them all, but stop at the first category (in the order specified in statute) that has someone in it. Spouses and children have some statutory rights, under certain conditions, to claim part of the estate even if there is a Will which leaves them out.

**Intervivos Trust** – A trust which goes into effect while you (being the person setting it up) are still alive.

**Irrevocable Trust** – A trust structure which can only be modified according to the terms contained in it. You (who created it) cannot take it away or change your mind and undo it.

**Living Will** – Also known as a Medical Power of Attorney or Medical Directive or Do Not Resuscitate form. It provides instructions on what medical care you do and do not want if you are unable to communicate your own wishes.

**Personal Representative/Administrator** – The person you Appoint to handle your estate under your Will (may also be known as an Executor in some jurisdictions). This person will be responsible for everything from lodging the Will, to gathering your assets, paying your bills, paying any estate taxes, and making sure that the designated beneficiaries receive what you said in your Will.

**Power of Attorney** – A document under which you give someone authority to act on your behalf and in your place. It may be general or specific, and may be durable or not.

**Probate** – The legal term for the court proceeding overseeing the handling of your estate, either with or without a Will. The procedures are almost identical either way, though in one, the Will is added to the file and guides the handling and disposition of your estate, while in the other, heirs are determined and statutes govern the handling and disposition of your estate.

**Quit Claim** – A deed to transfer any interest you may have in property (usually real estate) to someone else.

**Residual Estate** – A term for the catch-all part of a Will, where everything not specifically given to someone in the Will is handled. Some people choose to leave everything or nearly everything in this category, while others try to leave it mostly empty. There may be tax consequences which make one way or the other more beneficial.

**Revocable Trust** – A trust structure which you (who created it) can modify or even completely take away at any time. Once you have died, it becomes irrevocable.

**Specific Power of Attorney** – A document giving the Appointee power to handle a single transaction or a specified list of transactions or types of transactions. If it is for a single transaction, there is usually no termination date. Once the transaction is complete, it terminates automatically. If it is for a class of transactions, it may have a termination date. It will terminate on the earlier of the date specified, the date of the Grantor's incapacity, or the date of the Grantor's death.

**Testamentary Trust** – a trust that goes into effect after you die.

**Trust** – A legal document which creates a legal entity to handle certain assets. It is generally used to provide for minors, for disabled individuals, to provide benefits across generations, or

to control how particular beneficiaries can use what you leave to them. Trusts most commonly contain land and money, but anything can be placed in a trust.

**Trustee** – The person appointed to manage the Trust.

**Will** – A legal document you write to give instructions as to how your affairs are to be handled. It can tell how debts are to be paid. It generally tells how assets are to be handled. It can deal equally effectively with large assets like real estate, small valuables like jewelry and antiques, and general personal property like coffee cups and dolls.