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## **The Three Essential Estate Planning Documents**

**By James S. Rizzo, Esq.\***

When crafting an estate plan, you should provide your estate planning attorney with all family information, a summary of your assets, any negative health or relationship issues in your family and, perhaps most important, a list of goals you want to accomplish. A review of your goals and information can present a situation where a Medicaid Irrevocable Trust may be a strong option (to avoid nursing home costs from draining your assets) or a Revocable Living Trust. Both of these trusts avoid probate, thereby saving time and money. However, while a trust may not be for everyone, the following are the three critical documents it is recommended every adult (over 18) should have in place:

1. ***A Power of Attorney with Statutory Gift Rider.*** Having a valid Power of Attorney is arguably the most important or “urgent” document you should complete in order to preserve and protect your assets and general well-being during your lifetime. If you completed a Power of Attorney prior to 2010, know that the form has changed and it is advisable to have it reviewed and updated. While completing a Power of Attorney should only take about a half hour and be an inexpensive component of an estate plan, the cost of not having one can be great.

If you become incapacitated (fall prey to an accident or severe health issue) without a Power of Attorney in place, you run the risk of bills not being paid, insurance policies lapsing, services discontinued, house foreclosure, benefits lost (including but not limited to Medicare and Medicaid coverage) and a host of other financial pitfalls. These risks are exacerbated if you are single and/or have accounts, funds and real property solely in your name. Without a Power of Attorney, your loved ones may be forced to undertake a guardianship proceeding in order to have court appointed authority to act on your behalf. The legal cost of a such a proceeding can be in the thousands and take several months to complete. It may also increase the potential for litigation if another family member challenges the guardianship.

The Statutory Gift Rider section of the Power of Attorney is also an essential estate planning tool. The Gift Rider can authorize your agent to both gift and make asset transfers on your behalf in conjunction with a nursing home application, long term hospital stay or to assist with any estate tax issues. Since the Gift Rider can provide expansive asset transfer powers, it should be reviewed with an estate planning attorney to fully understand its benefits and provide additional safeguards if necessary.

2. ***A Will.*** Generally, if you die without a Will, you are immediately putting the burden upon your loved ones to engage a lawyer and begin the process of establishing and

administering your estate, all while dealing with the grief of your passing. If your death is sudden and unexpected, the stress, turmoil and additional fees and expenses of settling your estate and determining guardians for minor children only compound the emotional upheaval. You are also allowing/requiring the government to determine, via State law and the court system, not only the care and control of any minor children but how your assets are to be distributed and to whom. Dying without a Will also creates more of a chance of litigation over your assets or worse, over the guardianship of your minor children. If you have a child or spouse with a disability, the importance of a Will cannot be stressed enough. In this situation, a lawyer should draft language specifically addressing both the continued care of the disabled person and what happens to the assets they stand to inherit.

Don't let a perceived lack of assets stop you from getting your affairs in order. Getting your Will done thoroughly and properly can ensure your positive legacy for generations.

3. ***A Health Care Proxy.*** For a great majority of people, the thought of being kept alive only by artificial means with no mental capacity is a repugnant thought. A Health Care Proxy authorizes another individual (usually a spouse, significant other or adult child) to carry out your health care wishes and, among other powers, allows him or her to enter a "Do Not Resuscitate Order" ("DNR") on your behalf to relieve an end of life situation. Generally, without a Health Care Proxy and/or DNR in place, all reasonable medical treatments will continue and a person may be kept alive indefinitely (with ever growing medical and legal costs) or until a court order can be obtained to remove such measures.

A Health Care Proxy is usually the shortest and fastest estate planning document to complete. Once completed, a copy should be given to your primary care physician and any other facility where you obtain medical treatment.

Completing the above three documents will serve to, among other things, protect your assets and your physical well-being while you are alive, clearly state your wishes in an end of life situation and designate specifically what happens to your assets and minor or disabled children upon your death. While the assets you have and people you appoint to manage these issues will probably change over time, it is far easier to make updates and minor changes to these documents than have your family deal with a catastrophic situation with none of them in place.

The few hours these critical documents will take you to complete with an estate attorney can provide peace of mind for decades, if not generations.

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