



## ESTATE PLANNING & LIVING TRUSTS

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# LEGAL DISCLAIMER

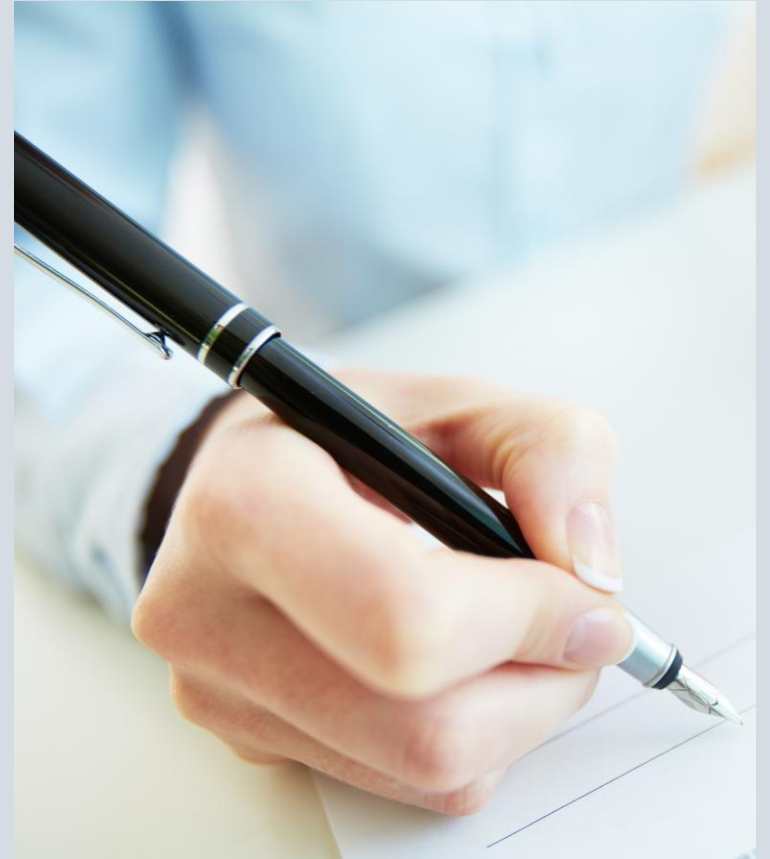
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Nothing in this presentation should be construed as legal advice.

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# WHAT ARE THE CORE DOCUMENTS OF AN ESTATE PLAN?

- Revocable Trust
- Pour-Over Will
- Power of Attorney (for financial matters)
- Advance Health Care Directive



# WHAT IS A POWER OF ATTORNEY.

- A legal document that allows you to appoint someone to manage your financial affairs if you become incapacitated.
- Can be effective immediately or upon incapacitation.

# TYPES OF POWER OF ATTORNEY.

- Durable vs. Non-durable.
- General vs. Limited.
- Immediate vs. Springing.
- Statutory, Printed and Attorney-Drafted

# BENEFITS OF A DURABLE POWER OF ATTORNEY

- Financial Management: Ensures your financial affairs are managed according to your wishes.
- Business Operations: Allows your appointed agent to manage business operations.
- Government Benefits: Your agent can manage and sign for government benefits.

# AGENTS FOR A DPOA

- Multiple agents
- Act independently or joint action required
- Different agents for different tasks (in limited POA situations)
- Successor agents

# TERMINATION OF DPOA

- Revocation by Principal
- Expiration as per instrument
- Agent's death/resignation/incapacity
- Dissolution or Annulment
- Principal's incapacity - if Non-Durable
- Principal's Death
- Revocation by Court



# WHAT IS AN ADVANCE HEALTH CARE DIRECTIVE (AHCD)

- A legal document that allows you to outline your preferences for medical treatment and appoint someone to make health care decisions on your behalf if you become unable to do so, unless you give authority effective immediately.

# WHAT IS AN ADVANCE HEALTH CARE DIRECTIVE (AHCD)

- It combines elements of a living will and a durable power of attorney for health care.
- Living Will: Specifies your wishes regarding medical treatments you want or do not want in certain situations, such as life-sustaining measures or resuscitation efforts.
- Health Care Proxy: Appoints a trusted person (agent) to make health care decisions for you. This person will ensure that your medical preferences are followed.

# BENEFITS OF AN AHCD

- **Medical Preferences:** Ensures your medical treatment preferences are known and respected.
- **Peace of Mind:** Provides clarity and peace of mind for you and your loved ones.
- **Avoids Family Conflicts:** Minimizes potential disputes among family members about your care.

# TYPES OF AHCD

- Statutory
- Printed – 5 Wishes, California Medical Association
- Attorney drafted.

# REQUIREMENTS FOR A VALID AHCD

- Dated as of execution
- Principal is a competent adult.
- Signed by either the principal or in the principal's name by another adult in the principal's presence and at her direction.
- Acknowledged before a notary public or signed by two qualified witnesses.

# WHAT IS ADDRESSED IN AN AHCD?

- Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.
- Select or discharge health care providers and institutions.
- Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
- Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

# WHAT IS ADDRESSED IN AN AHCD?

- Unless the principal limits the agent's powers some powers continue after the death of the principal.
- Disposition of body/remains.
- Power to authorize an autopsy
- Power to donate all or part of the body for transplantation, education or research purposes.
- Authority specifically granted takes precedence over the wishes of family members

# REQUIREMENTS FOR WITNESSES TO A VALID AHCD

- May not be the agent.
- May not be the principal's health care provider or an employee of the health care provider.
- May not be the operator/employee of a nursing facility or residential care home where principal resides.
- If the principal is in a nursing facility when executing the advance directive, the document must be signed by an ombudsman or a patient advocate.
- At least one witness must not be related or named in the will of the principal.



# RELEVANT LAWS

- A power of attorney for health care (PAHC) signed before January 1, 1992 expired seven years from the date of execution. PAHC or AHCDs signed after that date are indefinite in duration unless otherwise specified.

# RELEVANT LAWS

- The California Confidentiality of Medical Information Act §§ 56 et seq. requires that an authorization for release of medical information be clearly separate from any other language present on the same page and executed by a signature which serves no other purpose than to execute the authorization. Additionally, this same California statute requires the written authorization language to be in a typeface no smaller than 14-point type.
- An AHCD that does not include a separate HIPAA waiver in 14-point font may still be effective, but it might not fully comply with the specific requirements of CMIA. This could potentially lead to issues with the acceptance and enforcement of the document, especially regarding the release of medical information.

# QUESTIONS?

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