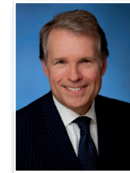

Your Estate Plan – 3 "Must-Have" Documents and a 4th You Should Consider

By Pat Green

A power of attorney, an advance directive and a will are three documents that form the foundation of good estate planning. A fourth document – a trust – is also helpful.

Two documents assist you while you are living:

Power of Attorney: You sign this document to authorize another to act for you if you become incapacitated or are unavailable for a period of time when documents need your attention. For instance, a power of attorney is useful if you will be trekking in Nepal for two months and you know that your house refinance needs to close while you are away. You may appoint your spouse, adult child or friend to temporarily sign the closing documents on your behalf. A power of attorney is crucial if you experience a serious illness or advanced age and you want an adult child to assist with banking, investment directions or assisted living facility matters.

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Advance Directive: Sign this form to authorize another (your agent) to make medical decisions for you when you cannot act. Also, you may specify what type of care you wish your agent and your physicians to provide for you. These decisions affect what level of nutrition, hydration and other procedures that your family and physicians should consider. An advance directive differs from the POLST (Physician Orders for Life-Sustaining Treatment) in that the POLST is used to instruct medical care providers on what level of emergency treatment should be given to a very sick individual or elderly person. For instance, a 95-year-old with a failing heart may not want emergency medical service providers to try heroic measures to restart the heart.

A third document helps survivors carry out your wishes after you are gone:

Will: A will appoints a person to act on your behalf. This person may be referred to as a personal representative or executor. Upon petition to the probate court, the judge authorizes the personal representative to gather assets, pay bills, pay taxes, notify beneficiaries under the will (and heirs), and to distribute the property according to the direction in the will, once all of the administration activities have been completed. The will may establish trusts that are designed to reduce taxes; manage funds for minors and other beneficiaries; and protect assets from the beneficiary's creditors. In Oregon, the minimum time that an estate must be kept open is four months, which gives creditors time to file claims. Usually, the process takes a year to 18 months, unless tax issues remain unresolved.

A fourth document that you should consider during estate planning is a trust.

Trust: Often referred to as a "living trust" because it is established during your lifetime, a trust can avoid probate at death if funded during your lifetime. Trusts may be revocable (a will substitute) or irrevocable (often used for tax planning for family, charity or business succession). In a revocable trust, you — as the trustor, settlor or grantor — name a person or institution, or both, to act as your trustee. Usually, the settlor (and often a spouse) serves as trustee during his or her lifetime while still able. You transfer property during your lifetime to the trust by deed (for real property), assignment (for tangible and intangible personal property) and by beneficiary designation (to coordinate life insurance proceeds, retirement benefits and the like). As the beneficiary of your trust, if you become incapacitated, the alternate trustee continues to manage the property, pay bills and take care of you. At death, the revocable trust, like a will, spells out how the property will continue to be managed under the trust or how it will be distributed to beneficiaries. The major advantages of the trust include administration of the estate without involving the probate court and privacy (probate files are open to the public).