Give yourself and your loved ones peace of mind by preparing for your future now

Estate Planning, Advance Directives & Powers of Attorney

Talking about illness, death, and dying is not easy. But, if you pass away having made no provisions for your assets or property, you’re putting your loved ones in a terrible position—they’re dealing with the grief of loss as well as trying to figure out your wishes.

At SLS, we can help you consider these realities of life now, so your loved ones aren’t burdened later. Give yourself and your loved ones peace of mind by taking control of your choices about the future.

Enclosed you’ll find:
(1) information about your estate planning options;
(2) information about advance directive choices, healthcare powers of attorney, and financial powers of attorney; and
(3) directions for obtaining these documents from Student Legal Services.

As you progress in your higher education and after graduation, your time will be even more limited. Don’t delay, take care of your future now.

Questions? Call (614.247.5853) or email us (studentlegal@osu.edu).

Other Services

In addition to assisting with Estate Planning, SLS can also provide legal services for:
- Landlord-Tenant/Off-Campus Housing
- Criminal Misdemeanors/Traffic Offenses
- Consumer Transactions, Debt Collection Defense, Credit Matters
- Uncontested Domestic Matters, and much more!

Schedule an appointment online at http://studentlegal.osu.edu or call 614.247.5853
What is a Will?
A will instructs the probate court where you would like your property to go when you die. A will may allow you to instruct the court to give your assets to persons who would not otherwise be given these assets by the state (i.e. close friends or a partner to whom you are not married). You can also designate guardians for minor children, as well as set up a Trust for assets to be distributed to those children.

Why have a Will?
With a will, you can appoint your executor, appoint guardians for children, provide for property distribution, and much more. If no will is found, the courts will appoint an administrator to administer the estate and distribute property according to law. Often the provisions of the law are not what the deceased would have wanted.

What is a Living Trust?
A Living Trust is a useful device to manage property and can be created and operated during one’s life, as opposed to a Will that takes effect upon a person’s death. Property placed in a Living Trust before death is not subject to probate (although will still be included in your taxable estate).

Why have a Living Trust?
If a person has a significant amount of assets and property, many attorneys advise having a Living Trust. A properly funded Living Trust ensures that your assets do not need to be submitted through Probate court, thus avoiding extra costs. Trusts can be created to allow for maximizing the amount of assets transferred after death while minimizing tax liability.

What is Probate? I’ve heard I should avoid it, is Probate bad?
Probate is a court supervised process to get assets that are titled in your name to where you want them to go. Probate is not necessarily a bad thing. Since you are no longer living, there needs to be someone to supervise the process of transferring your assets to those named in your will. The local probate court helps this person, called an executor or an administrator, carry this out. This process allows debts to be paid, taxes to be paid, and your assets to be given to those who you have chosen in your Will.

Will or Living Trust: Which do I choose?
Most people should have a Will at the very least, especially those with some assets and/or individuals with minor children. Individuals with more significant assets should consult an attorney specializing in Estate Planning to help them decide whether a Living Trust is a good option.

What Estate Planning services does SLS provide for students?
SLS can draft a Simple Will for you based on your preferences. In the Simple Will, you can choose an Executor to handle distribution of assets, instruct the Executor to whom to distribute assets, name a Guardian for your minor children, and set up a Testamentary Trust (different from a Living Trust) to provide for the care of your minor children. SLS cannot draft Wills with provisions for certain pension/retirement funds. Further, SLS cannot draft a Living Trust for you but will be happy to provide referrals for Estate Planning attorneys.
Can a Will be changed?
Your will should be reviewed periodically, as children are born and grow up, as you desire to change beneficiaries, or as your property situation changes. A testator (person making the will) may change or revoke their will as often as they desire unless they become insane or of unsound mind or are under undue influence. The will may be rewritten, or an amendment called a codicil may be attached at the end of a will. Every will should state at the outset that it is the last will of the testator. Never write on a will; you may invalidate it.

May I Will my property to anybody I want?
The law protects the legal share of a surviving spouse. If the will leaves the surviving spouse less than the share of the property to which spouse would have been entitled had there been no will, spouse can choose whether to accept the will’s provisions or to take the share allotted by law. It is recommended that every person have a Will, even if they think they have all property owned in non-probate form. Something may have been missed, or there could be claims by the estate, like accidental death, which create probate property.

Does the Will deal with all assets in a person’s estate?
No. A will can only provide instructions on how to distribute property that was individually owned at the time of death. Property owned as a joint tenant with right of survivorship (such as a home or a bank account) or assets that have beneficiaries (such as life insurance policies, annuities, payable-on-death bank accounts or transfer-on-death brokerage accounts) will not pass according to the terms of the will. These so-called “non-probate” assets will instead pass to the co-owner or beneficiary of the account, regardless of the terms of a will.

Who should I choose to be the Executor of my Estate?
You should choose someone that you trust who is mature and capable of managing your estate. You should talk to the person you are going to choose before executing your will as you do not want to surprise a friend or family member with this substantial responsibility. Most people tend to choose a family member or a close friend. But because of the intricacies that go with the job, you must realize that the most competent person (not the closest in relation) should be chosen. You could also choose an attorney, accountant or other professional to act as an executor for a fee, usually derived from your estate. The fee may be in the hundreds or even thousands of dollars (depending on the size of the estate and difficulties involved), but may be worthwhile, especially if it means that your family will receive their inheritance intact and on a timely basis.

Why do I need to choose a Guardian for my children now?
Procrastination can take a toll on those you most want to protect: your children. Unless you name a guardian in a Will, a judge could appoint just about anyone who applies and who seems fit for the job. If there are no applicants, your kids could be placed with a family member who is reluctant to have them, or they could wind up in foster care.

Who should I choose as the Guardian for my children?
Many factors can go into your choice. If you don’t automatically know who to choose, SLS can provide you with additional information to consider in making this choice—just ask us!

What is a Testamentary Trust?
A Testamentary Trust is created by the terms of a will and comes into being only after the Will takes effect when the testator dies. A Testamentary Trust is included in a Will and names a Trustee to hold and manage assets held in trust for the care (including health, maintenance, education, and support) of minor children.

Who should I choose as the Trustee for my children’s Testamentary Trust?
You do not need to choose the same person for the Trustee of the Testamentary Trust as you do for Guardian of your children. If you know that the Guardian is not good with money, you might want someone else to oversee the finances for your children. If you need additional information to consider in making the choice, just ask us.
What is a Living Will declaration?
A living will is a legal document you can use to express your wishes about the use of life-sustaining treatment if you should become terminally ill or permanently unconscious.
A living will:
- becomes effective only when you cannot communicate your wishes and are permanently unconscious or terminally ill;
- advises your doctor as to whether life-support technology is to be used or not used;
- gives doctors the direction or instructions about the medical treatment you want under these conditions;
- can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else;
- will be followed for a pregnant woman only if certain conditions apply; and
- specifies under what conditions you would want artificial feeding and fluids to be withheld.

Also, an anatomical gift (such as a gift of organs or tissues) can be made upon your death by completing a related form attached to the living will titled Donor Registry Enrollment Form.

What is a Health Care Power of Attorney?
A health care power of attorney (or “durable power of attorney for health care,” sometimes known as a “DPOA” or “health care proxy”) is a legal document that authorizes another person to make health care decisions for you if you cannot make them for yourself. A health care power of attorney:
- names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal;
- becomes effective only when you cannot make your own decisions regarding treatment;
- requires the person you appoint to make decisions that are consistent with your wishes; and
- will not overrule a living will if you have both documents.

If I have a Living Will, should I have a Health Care Power of Attorney too?
Many people will choose to have both documents, because a living will only applies in limited end-of-life circumstances, whereas a health care power of attorney covers all other situations concerning your medical care whenever you cannot make health care decisions for yourself. If you have both a Living Will and Health Care Power of Attorney, the Living Will overrides the Power of Attorney, if different.

Who do I designate as my Power of Attorney for Health Care?
You may appoint any adult you wish as long as it is not your doctor or the administrator of a health care facility in which you are being treated, or any person employed by either your doctor or a health facility in which you are being treated. You do not need to designate a member of your family.

What do I do after I fill out these documents?
Make several copies. Give one to a trusted member of your family. Keep another with your personal papers. Leave copies with your physician and your lawyer, and, perhaps, your clergy person. Be sure to give a copy of your health care power of attorney document to the person you have designated to be your agent.

What is a financial power of attorney?
In general, a power of attorney is created to allow one person (the principal) to authorize another person (the attorney-in-fact or the agent) to act or make decisions for the principal. A financial power of attorney (in contrast with a health care power of attorney) allows the principal to authorize an attorney-in-fact or agent to make financial decisions.

While such powers are designed and intended to last for as long as the principal is living, people sometimes need financial powers of attorney for limited purposes and limited time. For example, a person who is planning an extended trip or who is recuperating from an illness may grant such powers to a spouse or a child for a limited period of time. Financial powers of attorney documents can be fashioned to fit the principal’s particular needs.

The agent should always act according to the principal’s instructions or reasonable expectations, if the agent knows them; otherwise, the agent must act according to what he or she believes is the principal’s best interest. The agent should always be loyal to the principal, act in good faith and do nothing beyond the authority granted in the document.

What authority or powers will the agent have?
The agent will have only the authority and powers that the principal gives. This means that the principal can give the agent very broad, or very limited, powers. The form provided in the statute (written law) lists 22 classes of powers, such as real property transactions, banking transactions and tax matters. Such a list makes it easy for the principal to grant authority in some or all of these areas. An all-inclusive (general) grant of authority to an agent may not be honored, especially if the statute requires the principal to specifically allow a certain act to be authorized.

Must everyone honor a financial power of attorney?
No. Ohio law does not require third parties to accept powers of attorney documents. Many financial institutions have developed their own powers of attorney forms for their customers to use, and some institutions will not accept powers of attorney that are very old. When possible, it is wise to check with banks, brokerage firms, and insurance companies to ensure the financial power of attorney granted to an agent will meet an institution’s specific requirements.

Can the principal change a financial power of attorney?
Yes. The principal can always change or revoke (cancel) a financial power of attorney.

Can an agent act when the principal is incompetent or disabled?
Yes. The law now allows an agent to act when the principal is incompetent, as long as the principal has specifically stated in the power of attorney document that the agent will have authority even if the principal becomes incompetent or disabled.

Are there powers that cannot be given to an agent?
Yes. There are some matters that one cannot authorize another to do because they are considered too personal in nature. For example, a principal cannot authorize an agent to vote in his or her place.

When does the agent’s authority begin?
The agent’s authority begins when the power of attorney states that it will begin. Many powers of attorney documents state that the agent’s authority begins as soon as the power of attorney document is signed. Some powers of attorney documents state that the agent’s authority will “spring” into effect at a future date or upon a particular event. For example, a power of attorney document can provide that the agent’s authority will begin if and when the principal is no longer competent as determined by two physicians who have examined the principal. If an agent’s authority is to “spring” into effect in the future upon the occasion of a particular event, it is important to consider how easy or difficult it may be for the agent and others to determine whether such event has occurred.

When do the powers of the agent end?
The agent’s authority ends when the power of attorney states that it will end or when the principal revokes (cancels) the power of attorney. Many powers of attorney documents will not specifically state when the agent’s authority ends. If the document does not spell out a specific end to the agent’s authority, then the agent’s authority will end when the principal dies or revokes the power of attorney. An agent can never act after the agent knows the principal has died.

Let's get started...

Don't delay—give yourself and your loved ones peace of mind now by preparing for your future with a Will, Living Will, and/or Powers of Attorney.

SCHEDULE AN APPOINTMENT

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