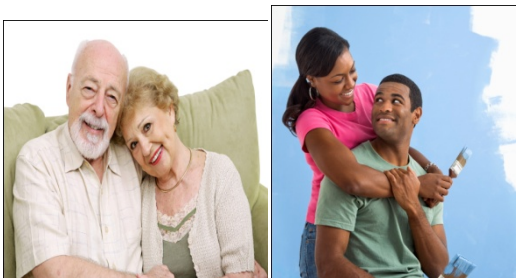


## ESTATE PLANNING BASICS



**Wolcott Rivers Gates**  
ATTORNEYS AT LAW

Convergence Center IV  
301 Bendix Road, Suite 500  
Virginia Beach, VA 23452  
Tel: (757) 497-6633  
Fax: (757) 497-7267  
[www.wolcottriversgates.com](http://www.wolcottriversgates.com)

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*This brochure will focus primarily on the basic documents that one should consider as part of his/her estate plan. This information is only an overview and you should consult with an experienced Estate Planning attorney to assist you with your individual estate planning needs.*

A basic estate plan should include an Advance Medical Directive, a General Durable Power of Attorney and a Will. Depending upon an individual's net worth and/or family dynamics, one might also consider preparing a Trust.

For individuals who have significant wealth, additional estate planning documents and tools can be incorporated into the basic estate plan, such as an Irrevocable Life Insurance Trust, a Charitable Trust, and/or gift planning. These additional estate planning techniques are complex and are beyond the scope of this brochure.

**Advance Medical Directive (“AMD”)**  
Typically, this is a two-part document. The first part provides an individual the opportunity to give a “dying declaration” to his/her family and physician. This declaration tells physicians and family members whether the individual wishes to die by natural means or whether he/she wishes to have life-sustaining artificial assistance in the event he/she is in a terminal or vegetative condition.

The second part of the AMD provides an individual the opportunity to appoint someone to make medical decisions for him/her when he or she is unable to do so as the result of a temporary incapacity (e.g., heavily medicated) or a permanent incapacity (e.g., Alzheimer's or dementia).

Also within the document, the individual may choose to make tissue, eye, and/or organ donations for any purpose, including research, or the individual may decide to limit the anatomical gift to provide for the sole purpose of helping others in need.

**General Durable Power of Attorney (“GDPOA”)** appoints a trusted person to manage the individual's finances, custody and personal needs should he/she be unable to do so. The GDPOA will not become invalid by the individual's subsequent incapacity, whether it is a physical or mental disability. The GDPOA is only valid during the lifetime of its maker.

If an individual becomes incapacitated and does not have a GDPOA, often an expensive Guardian/Conservator proceeding administered by the Court will be required.

There are two types of GDPOA's: (1) immediately effective and (2) “springing.” With the first type, the agents named within the document will have full ability to act on behalf of the individual as soon as the document is executed.

Some individuals are uncomfortable with the immediately effective GDPOA. In those instances, the individual can execute a “Springing Power of Attorney” (“SPOA”). A SPOA gives the agent the authority to act on the individual's behalf only if the document is accompanied by a certification from either the individual's physician or a court of proper jurisdiction indicating that the individual is incapacitated.

Individuals may decide to give full or limited powers to their agents through a GDPOA. In some instances, the agent is required to report or account to a third party on behalf of the individual for added assurance that the agent is acting appropriately.

**Last Will and Testament (“Will”)** provides individuals with the opportunity to leave their assets to family, friends and charities of their choice. Wills are only effective upon the death of the individual and they do not control the disposition of assets when a beneficiary has already been named (i.e. life insurance, IRA’s, etc.). Most Wills contain a provision involving tangible personal property and/or specific bequests (e.g., gifts of real estate or cash). The residue provision governs the distribution of the remainder of the individual’s estate to the designated beneficiaries. Also, the Will names the Executor/ Executrix (who settles the estate) and Guardian (who will raise any minor children).

Wills can vary in complexity:

**Simple Wills** are basic Wills for married or unmarried individuals with relatively uncomplicated estate plans – those that pass all the probate assets to the surviving spouse or children.

**Complex Wills** provide individuals with many different options by including more complex dispositive and tax planning tools. For example, an individual may wish to hold his/her assets in trust for the beneficiary because of the beneficiary’s age or pre-existing medical condition. Supplemental Needs Trusts can be

incorporated into a Will if a beneficiary is receiving means-tested support, such as Medicaid.

**Pourover Wills** are used when an individual has a Revocable Living Trust (“RLT”) as part of their estate plan. The Will simply “pours-over” to the RLT any asset not titled in the name of the RLT at death.

**Revocable Living Trusts** are created during life and can be amended or revoked. Generally, RLT’s can be useful for: (1) asset management during the creator’s (“settlor’s”) life, (2) efficient distribution of assets at the settlor’s death by avoiding probate, and (3) avoiding publicity.

The following family situations may benefit from a RLT: (1) blended families where each spouse wants his/her assets to pass to his/her respective children, (2) families with minor children who would receive large inheritances if both parents passed away, (3) families or individuals who may be subject to estate taxes at death, (4) families with disabled children, (5) families with a complex or unusual bequest, (6) families who want to avoid the public record or probate, and (7) families where the heir may have marital, creditor or personal problems.

The administration of a RLT does not become public record. Probate may be avoided if the settlor properly funded his/her trust and ensured that no probate assets remained in his/her estate at death.

There are many factors to consider when preparing your estate plan. It is important to consult with an experienced estate planning attorney to assist you with the preparation of your estate planning documents.

*This brochure has been designed to provide only general information about the subject matter covered. Please consult a professional if you require legal, accounting or other expert assistance.*

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**\*\*Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**

