

ESTATE PLANNING ROLES

The process of proper estate planning assumes an understanding of the various roles involved. In order to acquaint you with the terminology we'll be using, we have summarized the various positions you need to fill. Please keep in mind that the individuals or institutions you choose can serve in any or all of the positions mentioned. Please recall that team appointments make great sense in several of these roles, but that some must be, or are better, performed by single nominees.

DISABILITY PLANNING ROLES

A. DEFINITION OF DISABILITY PANEL PARTICIPANTS

These persons are named in your trust to participate in the decision of whether the Trustmaker is capable of managing his or her property and financial affairs. No financial and no medical decision-making authority is delegated to the persons serving in this role. Most clients choose some combination of medical opinion and family approval. The medical input assures better cooperation from financial institutions, while requiring family approval assures control of the timing of the removal of the Trustmaker.

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B. DISABILITY TRUSTEES

These persons assume complete financial control of your trust assets if your definition of disability is met. They serve subject to the instructions and priorities you have provided in your trust. No medical decision-making authority is delegated to the persons serving in this role. There is no residency requirement for naming a Trustee, and we strongly recommend you name Cotrustees. Your trust can contain great flexibility in how the Cotrustees will work together.

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C. AGENTS

These persons are appointed under Financial Powers of Attorney. The Power of Attorney describes the powers you delegate to your agent. All powers of attorney are "durable" (meaning the agent's power continues during the maker's disability.) The three most common types are:

1) **General** - Complete financial control is delegated, either immediately or after a 'weak' definition of disability is satisfied. We recommend that this power be held in escrow by your attorney after its execution, and used only as a back-up document. New Hampshire Law requires the Agent to agree to the appointment, so some disclosure to the Agent is required.

2) **Funding** - Only the power to transfer assets to trust is delegated. Because the need to transfer assets may well arise in an emergency situation and the power delegated is not subject to abuse, this power of attorney is effective upon signing. Consideration should be given to selection of an agent who is in close proximity to the family. New Hampshire Law requires the Agent to agree to the appointment, so some disclosure to the Agent is required. We usually think of this agent as the person who might be checking on your home or retrieving your mail if you were to go away on a trip for an extended period of time.

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3) **Limited** - The power to handle specific financial management and miscellaneous transactions is delegated. This power is effective only when the definition of disability in your trust is satisfied. It is designed to handle special situations where the Trustees' role for your "helpers" would cause tax, administrative or privacy concerns. These situations include management of retirement assets, gifting assets and dealing with the IRS, court system and other governmental agencies. We strongly recommend you name the same persons for this role as your Disability Trustees.

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D. HEALTH CARE REPRESENTATIVES

These persons are appointed under your Health Care Power of Attorney. A Health Care Representative makes medical decisions for you when you are unable to communicate yourself. These decisions are limited to "extraordinary care" issues. They include medical decisions. You can and should leave detailed instructions for your Health Care Representative regarding your health care goals, likes and dislikes. There is no financial authority delegated to the person serving in this role. We recommend you name one individual to serve at a time as opposed to joint Health Care Representatives in order to increase the likelihood of cooperation from medical personnel.

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E. DOCUBANK CONTACTS

We recommend you register your Medical Directive documents with Docubank, to insure your medical directives will be available when they are needed. The contacts you list here will be called in the order the names appear in the event of an emergency. We strongly recommend these persons be coordinated with your Health Care Representatives listed above. (These contacts are required only if you choose to enroll in Docubank.)

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E. PERSONAL GUARDIAN

A Guardian is appointed by the Probate Court. The length and scope of the Guardian's responsibility is determined by the court. A guardian may have financial authority, medical decision-making authority, or both. You may nominate the persons of your choice for yourself in your Health Care Power of Attorney documents. You nominate guardians for your minor children in your Will. (See letter C. below.) *Your estate plan will be designed to avoid the need for a court-appointed Guardians*, but in the event of unforeseen circumstances, it is prudent to have the persons of your choice nominated. It is equally important to identify those persons whom you *wouldn't* want to serve as your guardian, if there are any.

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DISTRIBUTION PLANNING ROLES

A. DEATH TRUSTEES

These persons assume complete financial control of trust assets after your death. They serve subject to the instructions and priorities you have provided in your trust. They may be the same persons as those named as Disability Trustees, but may be different if you so choose. You may select a corporate trustee to serve with a family member if you wish.

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B. PERSONAL REPRESENTATIVES

These persons assume responsibility for assets controlled by your Pour-over Will. Their major function is to transfer assets from your Pour-over Will into your trust. As you know, only assets left in individual name will require use of the probate process. We strongly recommend you name the same persons you named to serve as Death Trustees. Naming the same persons for both roles assures coordinated tax planning, catastrophic illness planning and a host of other benefits, including protection from legal challenge if your Pour-over Will ends up being used.

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C. GUARDIANS FOR YOUR MINOR CHILDREN

These persons take care of your minor children or your adult children who are unable to take care of themselves. They make decisions with regard to health care, education, religious training, discipline, and all other decisions a loving parent would make for the child. One person or a couple living in the same home should serve in this position at a time, to avoid disputes over custody, decision-making, etc. We recommend that you clarify which spouse (in the case of a married couple) should serve if the couple separates or divorces while serving. Name these persons or couple in the order in which they should serve. It is equally

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important to identify those persons whom you *wouldn't* want to serve as guardian for your children.

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OTHER CONSIDERATIONS FOR MINOR CHILDREN

Some parents express concern about who might make medical decisions for their minor children should the family be involved in a common accident and the parents do not survive. This situation might also arise in the case of a single-parent common accident. It may be advisable to execute a Parental Power of Attorney and Health Care Power of Attorney for Minor Child to address these issues. If you are interested in this additional planning, we invite you to discuss this further with our office.