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## LEGAL ISSUES AND PRACTICAL MATTERS

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### I. Basic Estate Planning Documents Every Adult Should Have

#### A. Durable Power of Attorney for Health Care Decisions

1. For health care decisions
2. Can avoid need for court-ordered guardianship
3. Can nominate a trusted person and share all your all your wishes with him or her
4. Allows another person to make decisions if the principal becomes incapacitated or unable to communicate wishes
5. Provide copies to healthcare providers and persons nominated
6. Can incorporate advance directive language
7. A good form is available for free through the Center for Practical Bioethics and its "Caring Conversations"  
resource: [www.practicalbioethics.org](http://www.practicalbioethics.org) or (816)221-1100

#### B. Advance Directive (Living Will)

1. More limited in application than the Health Care Power of Attorney
2. Applies only in the event of an irreversible and imminent terminal condition
3. Allows our individual wishes to be carried out when we can no longer communicate our own wishes

#### C. Durable General Power of Attorney

1. For business and financial matters
2. Can be as broad or as limited as the individual desires
3. Can be revoked
4. Can be effective immediately upon signing or upon the occurrence of some subsequent event like disability

5. Allows one to stay in control of future by nominating trusted persons
  6. Power of attorney agent can be compensated for his or her time
  7. Can nominate more than one person
  8. Agent should maintain good records of actions taken
- D. Last Will and Testament
1. Everyone over age 18 should have a Last Will and Testament
  2. This is the place to nominate guardians of minor children
  3. It should be a back-up document
  4. A will does not avoid probate

## **II. Three Primary Ways to Avoid Probate**

- A. A trust document is the most comprehensive method
1. It can be very specific and cover many contingencies
  2. It can be revocable or irrevocable
  3. Sometimes it is the best choice
- B. Joint ownership is another option to avoid probate
1. Another person shares ownership of assets and could deplete them or use them for his or her own purposes
  2. Ownership automatically transfers to the surviving joint owner no matter who passes away first
  3. Supersedes a last will and testament
    - a. So be sure to name all your intended co-owners
- C. Beneficiary designations are a third option to avoid probate
1. Includes both pay-on-death (POD) and transfer-on-death (TOD)
  2. Can be used for most, if not all, of our assets in Kansas and Missouri
  3. Often limited in the ability to cover detailed contingencies
  4. Must keep designations updated as ownership of assets change
  5. Supersedes a last will and testament
    - a. So be sure to name all your intended beneficiaries, not just the executor named in your will

### **III. Guardianship and Conservatorship**

- A. When a person becomes incapacitated and does not have power of attorney
  - 1. The court will appoint another to make medical and financial decisions
  - 2. Can be the same person for both roles, or different persons
  - 3. Must report to the court annually on health condition and finances
  - 4. A guardian and conservator is not financially responsible for the debts of the incapacitated person
  - 5. Becomes a matter of public record

### **IV. Long Term Care Planning for People with Disabilities**

- A. Long term care insurance should be considered if you qualify
  - 1. Usually uninsurable or too costly to obtain insurance coverage after a diagnosis of a chronic condition
  - 2. Be sure policy covers home health, assisted living, and at least a simple inflation protection rider
- B. Alternative estate planning is possible if long term care insurance is not obtainable
  - 1. Can include irrevocable or other types of trusts (such as special needs trusts)