

AN INTRODUCTION TO ESTATE PLANNING

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I. SOME DEFINITIONS AND BASIC CONCEPTS

A. Gift and Estate Taxes:

1. Kansas-- Presently imposes no estate, gift or inheritance tax of any kind.
2. Federal Estate & Gift Tax—The present rules:
 - a) There is an unlimited federal estate and gift tax deduction for marital gifts between spouses who are both US citizens..
 - b) An individual may give any amount up to \$15,000 per year (subject to annual inflation adjustment) to an unlimited number of people each year.
 - c) The federal estate and gift tax exemption equivalent is presently \$11.4 Million (subject to annual inflation adjustment **AND** reduction by half in 2026). For transfers in excess of that amount, the tax rate is 40%.
3. Will these rules change?

B. Your “Estate”:

1. Taxable Estate - Essentially all property owned by the decedent or in which he had any interest, including but not limited to the Probate Estate and all other property owned in a probate avoidance form.
2. Probate Estate - All property owned by a decedent in the decedent’s sole name and not having any beneficiary designation.
3. Net worth.

- C. Probate:** The legal process by which ownership of the property of a deceased person is transferred to the rightful successors in interest. Your successors in interest will be the people you designate in your Will, if you have one. If you have no Will, then they will be designated by the Kansas laws of intestate succession.

- D. Intestate Succession.** The provisions of Kansas law that identify your **heirs**, who will take your property in the event you die without a Will. An intestate estate is administered by a court-appointed **Administrator**.
- E. Will.** A written instrument executed with testamentary formality whereby a person can direct how his or her property is to be distributed upon his/her death. A Will can also designate the person who you want to act as **Executor** of your estate. A Will can also nominate a person(s) who you want to serve as a **Guardian** of your minor children in the event of your death.
- F. Trust.** A written instrument created by a person, typically called the **Settlor** (aka **Grantor** or **Trustor**), whereby the Settlor provides for property, typically called the Trust Estate, to be managed by a person, typically called the **Trustee**, for the benefit of a person, typically called the **beneficiary**.
1. Revocable or Intervivos or Living Trust – A Trust created by a person during his/her lifetime in which s/he has retained full power to amend or revoke the Trust.
 2. Irrevocable Trust – A Trust created by a person in which s/he has surrendered the power to amend or revoke the Trust
- G. Probate Avoidance Devices:**
1. Trust – see separate definition
 2. Joint Tenancy – A form of taking record title to property whereby two or more persons, identified as the joint tenants, have a present interest in the property and, upon the death of one of the joint tenants, the other surviving joint tenant(s) will automatically and by operation of law receive all of the ownership interest of the deceased joint tenant.
 3. IRAs, etc – Beneficiary designation.
 4. Life Insurance – Beneficiary designation.
 5. Pay On Death (POD) – a form of taking title of a bank account whereby the owner of the account designates the beneficiary who will automatically receive the account upon the owner's death, but otherwise the owner continues to retain all interest in the account.
 6. Transfer on Death (TOD) – a form of taking title to real estate or brokerage accounts whereby the owner of the realty or account designates the beneficiary who will automatically receive the account upon the owner's death, but otherwise the owner continues to retain all interest in the account.

H. Advance Directives:

1. Powers of Attorney – A legal document whereby you give another person the authority to act on your behalf during your lifetime.
 - a. **Health care and/or financial.** A power of attorney may be given to deal with health care matters, and a power of attorney may be given to deal with financial and business matters.
 - b. **Durable.** Durable powers of attorney authorize your agent to act even if you thereafter become incapacitated.
 - c. **Springing vs immediate.** A springing power of attorney authorizes your agent to act only after you become incapacitated.
 - d. **Only during lifetime.** Generally, all powers of attorney terminate upon the death of the person giving the power of attorney.
 - e. **Significance.** By having a power of attorney, you may avoid having to have a **Guardian** and a **Conservator**.
2. Living Will

II. YOUR ESTATE PLAN: Everyone has an estate plan, whether they know it or not.

A. If you have done no planning:

1. During your lifetime, if you become incapacitated for any reason and you have done no planning, then, in order to deal with your person and your property, some interested person will have to petition the probate court to have a guardian appointed to deal with your personal needs and a conservator appointed to deal with your property and business affairs.
2. Upon your death, if you have done no planning, all property that falls within your probate estate, will be administered under the authority of the probate court by a person selected by the court and designated as the Administrator of your estate. The Administrator will settle your affairs and distribute your probate estate to your heirs at law.

B. If you plan your estate:

1. During your lifetime, you should have Powers of Attorney whereby you designate a primary person and, ideally, one or more alternates, who will be able to act or speak on your behalf with respect to health care matters and who will be able to act on your behalf with respect to financial and

business matters, all without the need for any intervention or supervision by the probate court.

2. Upon your death, by a combination of your Will, your Trust (if you choose to use one), and other probate avoidance devices, you identify the person(s) who are to administer your estate and receive your property.
3. Rights of a Spouse
4. Expectancy of Children

C. What your plan should be depends on your circumstances

1. Taxable or non-taxable.
2. Married:
 - a. No kids
 - b. Minor kids
 - c. Adult kids
 - d. Child or spouse with special needs
3. Single:
 - a. No kids
 - b. Minor kids
 - c. Adult kids
 - d. Child with special needs
4. Second Marriage, or how to complicate your life.
5. Shakespeare's seven ages of man.

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65-28,103. Same; declaration authorizing; effect during pregnancy of qualified patient; duty to notify attending physician; form of declaration; severability of directions. (a) Any adult person may execute a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The declaration made pursuant to this act shall be: (1) In writing; (2) signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction; (3) dated; and (4)(A) signed in the presence of two or more witnesses at least 18 years of age neither of whom shall be the person who signed the declaration on behalf of and at the direction of the person making the declaration, related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care; or (B) acknowledged before a notary public. The declaration of a qualified patient diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient's pregnancy.

(b) It shall be the responsibility of declarant to provide for notification to the declarant's attending physician of the existence of the declaration. An attending physician who is so notified shall make the declaration, or a copy of the declaration, a part of the declarant's medical records.

(c) The declaration shall be substantially in the following form, but in addition may include other specific directions. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

City, County and State _____

of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness _____ (OR) _____ Witness _____

STATE OF _____)

_____ ss.

COUNTY OF _____)

This instrument was acknowledged before me on _____ (date) by _____ (name of person)

(Signature of notary public)

(Seal, if any)

My appointment expires: _____

Copies _____

History: L. 1979, ch. 199, § 3; L. 1994, ch. 224, § 2; July 1.

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58-632. Same; form. A durable power of attorney for health care decisions shall be in substantially the following form:
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS GENERAL STATEMENT OF AUTHORITY GRANTED

I, _____, designate and appoint:
Name _____
Address: _____
Telephone Number: _____

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

- (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;
- (2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and
- (3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:
(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted).

LIMITATIONS OF AUTHORITY

- (1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.
- (2) The agent shall be prohibited from authorizing consent for the following items:

- (3) This durable power of attorney for health care decisions shall be subject to the additional following limitations:

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity).

REVOCATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked.
(This durable power of attorney for health care decisions shall be revoked by an instrument in writing executed, witnessed or acknowledged in the same manner as required herein or set out another manner of revocation, if desired.)

EXECUTION

Executed this _____, at _____, Kansas.

Principal.

This document must be: (1) Witnessed by two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care; OR (2) acknowledged by a notary public.

_____	Witness	_____	Witness
_____	Address	_____	Address
	(OR)		

STATE OF _____) SS. COUNTY OF _____)

This instrument was acknowledged before me on ___(date)___ by ___(name of person)___.

(Signature of notary public)

(Seal, if any)

My appointment expires: _____

Copies

History: L. 1989, ch. 181, § 8; July 1.

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