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WEALTH PRESERVATION SOLUTIONS<sup>SM</sup>  
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## THE MOST IMPORTANT DOCUMENTS THAT NO ONE TALKS ABOUT

It is common for a client to come our office to discuss their need for a Will and or Trust and have no knowledge or interest in the estate planning documents that will have the greatest impact on them: namely a Durable Power of Attorney, a Health Care Surrogate, a Living Will and a Declaration of Preneed Guardian. These are the poor stepchildren of the estate planning practice but much like Cinderella, they quickly become the center of everyone's attention. This newsletter focuses on these "life planning" documents that no one seems to discuss.

A Durable Power of Attorney is an agreement between a principal, the one who is creating the Power of Attorney, and a designated agent, customarily known as an attorney-in-fact. The Durable Power of Attorney is governed by Florida's statutory law. The principal designates the attorney-in-fact to act for him or her in a general or limited capacity, usually in financial matters. A Durable Power of Attorney is effective upon the date of signature and remains in effect when the principal is subsequently incapacitated. However, the Durable Power of Attorney is no longer effective when the principal dies. Any person who is of sound mind and 18 years of age or older or a financial institution authorized to conduct trust business in Florida, may serve as an attorney-in-fact. The Durable Power of Attorney is essential for dealing with assets titled in a person's name when that person is unable to do so themselves due to temporary or permanent incapacity or unavailability.

A Designation of Health Care Surrogate allows a competent individual (principal) to designate another person, known as a surrogate, to make health care decisions if he or she becomes unable to make or express those decisions. The surrogate has no authority until an attending physician determines that the principal lacks capacity to make his or her own health care decisions. In addition to the above, the surrogate may authorize release of the principal's medical information and clinical records to other appropriate persons to assure the continuity of the principal's care, and may authorize, in certain circumstances, the transfer and admission of the principal to or from a health care facility. It is generally the Health Care Surrogate who insures that the terms of the principal's Living Will are honored.

A Living Will evidences the principal's choices with regard to the withholding or withdrawing of life-prolonging procedures in the event of permanent incapacity or a terminal or end-stage condition. The Living Will can eliminate the often painful results of artificially

prolonging the natural process of dying. As noted above, it works in concert with the Designation of Health Care Surrogate.

The Declaration Naming Preneed Guardian allows an individual (principal) to name someone to serve as his or her guardian in the event of the principal's later incapacity. The Court in a guardianship proceeding considers the Declaration of Preneed Guardian as the principal's nomination of a Guardian. The Declaration Naming Preneed Guardian creates a rebuttable presumption that the person nominated is entitled to serve as guardian of the principal. However, a Court may refrain from appointing the nominated person as guardian for various reasons.

These "life planning" documents ensure that a client can designate who controls their financial and health care decisions in the event he or she is rendered temporarily or permanently incapacitated or unavailable. These documents can have an immediate impact on the life style of an individual and should be a part of any estate plan. Please consult with your Wealth Preservation professional about these necessary components for good, comprehensive estate planning.

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