Presentation – Wills and Estates

LiBria R. Stephens

Married, mother of teenaged son; practiced law for approximately 10 years in private practice; Graduate of UNC – CH with BA in Political Science; Graduate of NCCU School of Law; Jury Commissioner in Durham County, former Human Relations Commissioner; active member of Hillside IB Parent’s Organization and Hillside High School Booster Club; Member of People’s Alliance

1. The Planning Process – The Questionnaire
   a. What Documents Are Needed Based on Questionnaire
      i. Power of Attorney
      ii. Living Will
      iii. Health Care Power of Attorney
      iv. Wills
      v. Trusts

2. What Happens After Death – Opening an Estate
   a. With a Will
      i. AOC-E-201
      ii. AOC-E-304
      iii. AOC-E-400
      iv. AOC-E-402
   b. Without a Will
      i. AOC-E-202
      ii. AOC-E-200
      iii. AOC-E-404
      iv. AOC-E-400
      v. AOC-E-402

3. Contesting Will or Questioning Actors in the Estate
   a. Caveat
   b. Requesting an Accounting
   c. Removal of Administrator/Executor

4. Question and Answer Session
Will/Trust Questionnaire

The information requested below is essential in preparing your will or trust. If you need more space to answer a question, attach a separate sheet and indicate the question number to which it pertains. If both you and your spouse require estate planning documents, you will need to each fill out a separate questionnaire. (When filling out two questionnaires, long or complex directions that will be identical in both sets of documents may be written down on only one questionnaire and referred to on the second questionnaire.)

1. State your full name:

_________________________________________________________________
First    Middle         Last

State all other names by which you have been known:

_________________________________________________________________

Age: _____________  Date of Birth:___________________

Sex:  Male   Female

2. State your current address:

_________________________ __________________ ______ _______
Street address   City    State  Zip Code

Telephone Numbers:

___________________  ___________________ _________________
Home    Cell    Work

Email: _______________________________

3. Married? If so, Please state your spouse’s full name:

_________________________________________________________________
First    Middle         Last

__________________  _______________________  ___________________
Maiden    Date of Birth
4. Have you created any trusts or made gifts to any trusts? If yes, describe:
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

5. Do you have a date on which you expect to have any inheritance distributed to you? If so, state from whom and how much:__________________________________________
__________________________________________________________________________
__________________________________________________________________________

6. Please indicate, by checking the appropriate option, how you want your assets to pass when die.

______Option A: I want my assets to pass my spouse and children as follows:
  • To spouse, if surviving.
  • If my spouse predeceases me, my assets will be divided in equal shares among children.
  • If any of my children predecease me, that child’s share shall be distributed to his or her children in equal shares.
  • In the event my spouse and all of my children and descendents fail to survive me, I want assets to be distributed as follows:
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

______ Option B: I am unmarried with children and want my assets to pass:
  • In equal shares to my children.
  • If one or more of my children predeceases me, that child’s share in my estate is distributed to his or her children in equal.
  • In the event all my children and descendents fail to survive, I want my assets to be distributed as follows:
__________________________________________________________________________
7. At what age(s) do you want the monies to be distributed to your children/beneficiaries?
List percentages:

_____% at _____ years old; _____% at _____ years old; ______% at _____ years old.

Other:___________________________________________________________________________

8. List any instructions regarding limitations on distributions (such as must finish college, etc.), or special situations (such as starting a business, getting married, etc.).
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

9. Do you wish to disinherit any child, grandchild, or other person? If yes, you must list their names here:
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

10. Many people make special provisions for family heirlooms, jewelry, or other items of special value to be distributed to friends or relatives. If you have such property and wish it left to a specific person, please complete the following:
If you have chosen “Option A” or “Option B” under number 11, you have indicated by your selection the items described above will pass to your spouse and/or children. Complete this number ONLY if you desire such items of specific value to be left to specific person(s).

<table>
<thead>
<tr>
<th>Item</th>
<th>Special Identifying Features</th>
<th>Recipient</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11. If your children are under age eighteen (18), state the full name, address, and relationship (if any) of the person you wish to act as their guardian (custody) in the event of your death (in the case of single parent) or in the case of the joint death of you and your spouse (if married). You should obtain the consent of the person(s) before executing your Will.

Note: A guardian is a person lawfully invested with the power, and charged with the duty, of taking care of the person who is incapable of doing so because of age or other capacity.

Guardian(s)

Name:___________________________________________________________

Address:_________________________________________________________

Street:________________________ City:____________ State:________ Zip:_____

Relationship (if any)_________________________________________________

If the person or entity listed above is unwilling or unable to serve as guardian, please list an alternate:

Successor Guardian(s)

Name:___________________________________________________________
12. If you want the guardian to receive a stipend/compensation for the taking on the responsibilities of guardian, please set forth the details (e.g. monthly, annually, COLA, salary reimbursement to stay at home, etc.).

________________________________________________________________________

13. Do you want the appointed guardian also to be the conservator of any assets inherited by the minor child/ren? **Note: A conservator is a person appointed to manage the financial affairs of one who legally incapable of doing so because of age or other capacity.**

_______Yes  _____No

14. WILL/POUR-OVER WILL (with trust)-The person charged with administering your estate, paying taxes and other debts, marshalling, preserving, managing and distributing estate assets and property is called personal representative (executor). State the name and address of the person you wish to serve in this role.

Spouse first?  ____Yes  ____No
Successor or if not spouse:

Primary Successor

Name: ____________________________________________________________

Address: __________________________________________________________

Street  City  State  Zip

Relationship (if any)________________________________________

If the person listed above is unwilling or unable to serve as a personal representative, please list an alternate:

Second Successor

Name: ____________________________________________________________

Address: __________________________________________________________
Relationship (if any) ________________________________

Do you wish to waive the fiduciary bond requirement (usually they serve without bond)?

Note: A fiduciary bond is a type of surety bond required by the court to be filed by executors, guardians, etc., to ensure proper performance of duties.

____Yes  ____No

15. Trust/Child’s Trust (with a will if there is/are minor children)- The person charged with administering your estate through your trust, paying taxes and other debts, marshalling, preserving, managing and distributing estate asset and property is called a trustee. State the name and address of the person you wish to serve in this role.

First Successor Trustee

Name: __________________________________________________________________

Address:_________________________________________________________________

Relationship (if any)___________________________

If the person listed above is unwilling or unable to serve as a trustee, please list an alternate:

Second Successor Trustee

Name: __________________________________________________________________

Address:_________________________________________________________________

Relationship (if any)___________________________

Do you wish to waive the fiduciary bond requirement (usually they serve without bond)?

Note: A fiduciary bond is a type of surety bond required by the court to be filed by executors, guardians, etc., to ensure proper performance of duties.

______Yes  ____No
16. In what place and manner do you wish your remains to be disposed of?
___________________________________________________________________________
___________________________________________________________________________

**Execution of a Will/Trust is the best way to determine how your property will be distributed; however, it cannot address important issues regarding health care decisions. You may want to discuss the functions of a Health Care Power of Attorney and a Living Will with our office. These issues should be discussed prior to drafting these documents with the person named as agent.**

17. If you become incapacitated, whom do you want to make health care decisions for you?

   Spouse first? ____Yes      _____No   Successor if not Spouse:

   **Primary Successor Agent**

   Name: ________________________________

   Address: ________________________________________________________________
   Street    City    State  Zip

   Phone Number: ____________________  Relationship (if any) ___________________

   If the person listed above is unwilling or unable to serve as a trustee, please list an alternate:

   **Second Successor Agent**

   Name: ________________________________

   Address: ________________________________________________________________
   Street    City    State  Zip

   Phone Number: ____________________  Relationship (if any) ___________________

18. The agent under your Health Care Power of Attorney has the ability to make a mental health care decision on your behalf. However, that agent does not have the ability to place you in a level one behavioral health care facility licensed by the Department of Health Services (a locked facility), in the event that you need to be in this type of facility. This document is especially recommended to those who have a family history of mental illness (including Alzheimer’s disease).
Do you want a Mental Health Care Power of Attorney? _____Yes   _______No

If yes, who do you want to have the authority to make all mental health care decisions for you?

Spouse first? _____Yes   _______No

Primary Successor if not Spouse:

Name: ____________________________________________

Address: __________________________________________

Street    City    State  Zip

Phone Number: ____________________  Relationship (if any) _____________________

19. Do you want a Living Will (Life Support decisions)? _____Yes   _______No

If yes, who do you want to be responsible for the deciding to remove you from life support?

Spouse first? _____Yes   _______No

Primary Successor Agent if not Spouse:

Name: ____________________________________________

Address: __________________________________________

Street    City    State  Zip

Phone Number: ____________________  Relationship (if any) _____________________

If the person listed above is unwilling or unable to perform that duty, please list an alternate:

Second Successor Agent if not Spouse:

Name: ____________________________________________

Address: __________________________________________

Street    City    State  Zip

Phone Number: ____________________  Relationship (if any) _____________________
20. Here are some general statements about choices you have as to health care you want at the end of your life. Put a check next to whichever choices best fit your wishes. Any combination can be used but if you choose “Direction to Prolong My Life (to the greatest extent possible)”, no other choices should be checked.

______ Comfort Care Only: If I have a terminal condition I do not want my life to be prolonged, and I do not want a life-sustaining treatment, beyond comfort care, that would serve only to artificially delay the moment of death. *(NOTE: “Comfort Care” means treatment in an attempt to protect and enhance the quality of life without artificially prolonging life.)*

______ Specific Limitations on Medical Treatments I want: *(NOTE: mark one or more choices below).* If I have a terminal condition, or am in an irreversible coma or a persistent vegetative state that my doctors reasonably believe to be irreversible or incurable, I do want the medical treatment necessary to provide care that would keep me comfortable, but I do not want the following:

______ 1. Cardiopulmonary resuscitation, for example, the use of drugs, electric shock, and artificial breathing.

______ 2. Artificially administered food and fluids.

______ 3. To be taken to a hospital if it is as all avoidable.

______ Pregnancy: Regardless of any other directions I have given in this Living Will, If I am known to be pregnant I do not want life sustaining treatment withheld or withdrawn if it is possible that the embryo/fetus will develop to the point of live birth with the continued application of life sustaining treatment.

______ Treatment Until My Medical Condition is Reasonable Known: Regardless of the Directions I have made in this Living Will, I do want the use of all medical care necessary to treat my condition until my doctors reasonable conclude that my condition is terminal or is irreversible and incurable, or I am in a persistent vegetative state.

______ Directions to Prolong my Life: I want my life to be prolonged for (amount of time)

______ Days  ________  Months  ________  Years

______ Direction to Prolong My Life: I want my life to be prolonged to the greatest extent Possible.

______ Other Directions: ____________________________________________________________
21. Do you wish to donate your organs for the following purposes?

- Transplantations: _____Yes  _____No
- Research:       _____Yes  _____No
- Studies:        _____Yes  _____No

In addition to a Last Will and Health Care documents many individuals ask to receive a General Durable Power of Attorney that becomes “EFFECTIVE UPON INCAPACITATION”. This document allows an individual’s designated ‘Attorney-In-Fact’ to act for him/her in all financial matters during any time that the individual is incapacitated due to medical or other problems. The Attorney-In-Fact will have full control over your financial future; therefore, you need to make sure only to select trustworthy individuals to act in such an important capacity for you.

22. Do you want a General Durable Power of Attorney? _____Yes     _____No
If yes, then who do you wish to be your Attorney-In-Fact?

- Spouse first? _____Yes     _____No
- Primary Attorney-In-Fact if not Spouse:
  Name: ___________________________________________________________
  Address:_________________________________________________________
    Street    City    State  Zip
  Phone Number: ____________________  Relationship (if any)  ___________________
If the person listed above is unwilling or unable to perform that duty, please list an alternate:

- Successor Attorney-In-Fact:
  Name: ___________________________________________________________
  Address:_________________________________________________________
If there is any other information you think would be help us prepare your Will, please include below or on a separate sheet of paper and attach it to this questionnaire.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Confirmation of information and instructions: I will confirm the information provided by me in this questionnaire is complete and accurate, and that the instructions I am providing reflect my wishes.

_____________________________________________  Signature

_____________________________________________  Printed Name

_____________________________________________  Date