# Information Needed for Wills & Trusts

Full Legal Name from Driver's License or Identification Card
Address
Telephone Number
Email
Social Security Number
Date of Birth

The above information is needed for the client(s) and each beneficiary and contingent beneficiaries.

You also need to provide the above information for:

- The person or entity you are appointing to act as Personal Representative and/or Trustee and their successor.
- Each of your designated Agents and their alternates for the following:
    - Durable Power of Attorney (Financial Decisions)
    - Health Care Surrogate(Medical Decisions)
    - Living Will (End of Life Decisions)
    - Preneed Guardianship
    - HIPAA (Medical Information)

Also please be prepared with the following information:

For any Bequest: the asset and the beneficiary; and the contingent beneficiary for each asset in the event the original beneficiary predeceases you.

A list of any tangible untitled personal property you want to leave to a beneficiary that will not be specifically provided for in your will or trust, but will be recorded in a Separate Writing which will be attached to your signed Will.

Any special provisions for minors or other beneficiaries; for example: support through college, amounts to be given at certain ages, and provisions in the event there are drug or alcohol concerns.

# ADVANCE DIRECTIVES - ADDITIONAL CONSIDERATIONS

The Florida Statutes provide forms for advance directives (Living Will and Designation of Health Care Surrogate). An advance directive is a witnessed written or spoken statement made by a competent adult, which gives instructions or expresses that individual's desires concerning any aspect of his or her future health care treatment. These documents may be sufficient for your needs. However, many people add specific information to the forms, making them fit individual needs not addressed in the statutory forms.

Every patient has a right to understand treatment proposed by a health care provider, including cost, risks, and alternatives to the proposed treatment, before consenting to the treatment. This right is known as the right of "informed consent." Every patient has the constitutional right to refuse proposed treatment. This may be done either personally if the patient has the mental capacity to do so, or through a surrogate or proxy if the patient lacks mental capacity. A health care surrogate makes health care decisions for an incompetent individual. In making those decisions, the health care surrogate is bound to follow the instructions and wishes of that individual, *not* those of the health care surrogate. The more specific the directive, the more likely your wishes will be followed.

There is no guarantee that medical providers will honor a living will. However, failure to specify in the living will conditions or illnesses for which you would want to have specific treatment withheld or withdrawn may result either in a hospital refusing to withhold the treatment or in a court hearing to determine whether the treatment should be administered. (A court hearing can be costly.)

Do not assume that the living will and health care surrogate forms provided by a hospital, nursing home, doctor, The Florida Bar, or anyone else reflect your particular wishes. The forms in the statute are optional.

The living will and designation of health care surrogate forms should give the person you name as your surrogate the authority to make any and all health care decisions for you in accordance with your values and your religious and moral beliefs, at a time when you do not have the mental capacity to make the decisions for yourself. Your surrogate may consent, refuse to consent, or withdraw consent previously given to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. As a result, *both* documents should be written to reflect your personal wishes.

If you have any doubts about the documents provided to you, you should discuss these matters with your doctor and your lawyer. Use these professionals to assist you in identifying conditions not contemplated by the statutory forms and specific types of treatments or procedures that you want withheld if those conditions occur.

Your Designation of Health Care Surrogate and Living Will are important legal documents. Before you sign, please consider the following facts:

1. Signing your Designation of Health Care Surrogate protects your rights to make your wishes known about medical treatment, but it does not guarantee that your wishes will be honored.
2. The documents do not have to be notarized, but each must be signed by two witnesses. Both witnesses must be adults, and at least one must be someone other than your spouse or a blood relative. Your health care provider or an employee of your health care provider may not be a witness.
3. You have the right to make decisions about your medical treatment as long as you are able to give informed consent. Your surrogate will make health care decisions that you are no longer able to make for yourself when you are unable to give informed consent. Your surrogate will have the power to make all health care decisions, including decisions about life-sustaining treatment.
4. The documents will remain valid until you revoke them. You can revoke by signing another advance directive, by signing a statement that you revoke a

document, by ripping up a document, or simply by saying that you revoke a document. If you do revoke either a Designation of Health Care Surrogate or a Living Will, you have to tell everyone to whom you gave a copy that you have revoked it.

5. You have the duty to notify your doctor that you have signed an advance directive. You should give your doctor a copy of each document. You should also give a copy of each to anyone who would likely be called in an emergency. Also, you should keep a list of everyone to whom you give a copy. You should keep the original in a safe place. Take a copy of each with you whenever you travel. To minimize any confusion or doubt about your wishes or the surrogate's authority, the documents should be as specific and explicit as possible.

6. In these documents, you can put limitations on the power to make health care decisions, or you can include your specific desires for treatment or the withholding of treatment. For the most part, your surrogate will be obligated to follow your instructions when making decisions on your behalf.

7. You should inform the person you have chosen as your health care surrogate of your decision, providing him or her, along with any alternates, with a copy of each document.

8. Do not sign the documents unless you clearly understand them.

9. Your situation may be unique, and these forms may not be sufficient. The Florida Statutes are not the only source of writings that exercise your right to control your medical treatment.

*F.S.*765.101(4) defines "end-stage condition" as "an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective."

*F.S.* 7645.101(12) defines "persistent vegetative state" as "a permanent and irreversible condition of unconsciousness in which there is: (a) The absence of voluntary action or cognitive behavior of any kind. (b) An inability to communicate or interact purposefully with the environment."

*F.S.* 765.101(17) defines "terminal condition" as "a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death."

It is unclear whether the definition above will allow life support to be removed in the later stages of Alzheimer's, stroke, amyotrophic lateral sclerosis, Parkinson's, or other chronic illnesses. The definitions of "terminal condition" or "end-stage condition" in the documents can be expanded to include these conditions (for example, "any condition which renders me unable to care for myself, such as a massive cerebrovascular accident, severe prolonged Alzheimer's disease, Parkinson's disease, amyotrophic lateral sclerosis, or similar catastrophic traumas, diseases, or illnesses").

Some examples of "life-prolonging procedures" you may want to ask for or specifically decline are listed below. This list is illustrative only and is not meant to be exhaustive. If you are concerned about these particular procedures, be as specific as possible so that you accurately express your feelings.

1. Cardiopulmonary resuscitation (CPR). Using drugs and electric shock to keep the heart beating at the point of death. This may require a separate "DNR" (do not resuscitate) order in order to avoid CPR.
2. Artificial administration of nutrition and hydration (forced feeding and fluid through tubes in the veins, nose, or stomach).
3. Mechanical, drug, or chemical treatment by any means.
4. Mechanical breathing assistance (breathing by machine).
5. Chemotherapy (using drugs to fight cancer).
6. Invasive diagnostic tests (for example, using a flexible tube to look into the stomach).
7. Blood or blood products by transfusion.
8. Antibiotics (using drugs to fight infection).
9. Surgical procedures, major or minor
10. Pain medications (may dull consciousness and indirectly shorten life).

# NOTICE REGARDING POWER OF ATTORNEY

A durable power of attorney is an important legal document. By signing the durable power of attorney, you are authorizing another person to act for you, the principal, without any court supervision or approval. Each person you appoint to serve as your agent should be someone you trust completely. Before you sign the durable power of attorney, you should know these important facts:

The power of attorney is a very powerful document designed to give the designated person or persons (your "agent") the ability to manage your financial affairs. For instance, your agent has the power to manage, dispose of, sell, and convey your real and personal property, to open and close bank accounts, to sign your tax returns, and to use your property as security if your agent borrows money on your behalf. These are just a few of the powers you are giving to your agent. Your agent will have the right to receive reasonable payment for services provided under the durable power of attorney.

The powers you give your agent will continue to exist for your entire lifetime, unless you state that the durable power of attorney will last for a shorter period of time or unless you otherwise terminate the durable power of attorney.

You can amend or change the durable power of attorney only by executing a new durable power of attorney or by executing an amendment through the same formalities as an original. You have the right to revoke or terminate the durable power of attorney at any time, so long as you are competent.

You should read the durable power of attorney carefully. When effective, the durable power of attorney will give your agent the right to deal with property that you now have or might acquire in the future.

By signing below, I acknowledge that:

- I have read the foregoing notice.
- I understand that the power of attorney is effective upon signing.
- Doris A. Bunnell explained to me the powers contained in paragraphs *a through r* and answered all my questions.
- Doris A. Bunnell thoroughly explained and discussed the ramifications of the powers contained in paragraphs *a through i* of the second section and answered all my questions.

Signed on:

_____

***Client***

## INSTRUCTIONS FOR USE OF SEPARATE LIST FOR THE DISPOSITION OF TANGIBLE PERSONAL PROPERTY

Florida probate law permits the use of a separate writing or memorandum to dispose of your tangible personal property. If you wish to use such a writing or memorandum rather than itemize various items of tangible personal property in your Will, you should know and follow the requirements that are specifically set out in the law:

The law specifically identifies the types of tangible personal property which *can* and *cannot* be disposed of by a separate writing or memorandum.

Personal property that ***MAY NOT*** be disposed of by separate writing or memorandum includes:

1) Intangible personal property, such as money, evidences of indebtedness, documents of title, stocks, bonds, or securities

2) Tangible personal property used in a trade or business

3) Other tangible personal property if it is specifically disposed of by will

All other types of tangible personal property, such as jewelry, silverware, antiques, stamp collection, china, glassware, furniture and furnishings, and other items of tangible personal property *may* be disposed of by separate writing or memorandum.

Other requirements in order to use a separate writing or memorandum are:

The memorandum or list must be signed and should be dated by you. Your signature does not need to be witnessed on your separate writing memorandum or list.

The memorandum or list must describe clearly each item so that a particular item will not be confused with any other similar item.

Your Will must specifically refer to the fact that you may be disposing of tangible personally property by a separate memorandum or list. If your will does not mention a memorandum, discuss with us how to make sure that it does. NEVER make *any*

change in the Will itself.

The memorandum or list may be completed prior to or after the date of signing of your Will.
The memorandum or list, to be effective, must be in existence at the date of your death. Therefore, keep it in a place where it can be easily found. Advise your personal representative of its existence and location.

You should clearly identify the beneficiary who is to receive each item by their proper name and relationship to you. Also, list the address of the beneficiary if the beneficiary is not a close relative.

From time to time, you may change the beneficiaries or items of property listed in the memorandum, or you may revise or revoke the memorandum. However, NEVER make any changes by marking or altering the memorandum. Prepare a new memorandum and destroy the old one.

## SEPARATE WRITING

Written statement under the Last Will and Testament of the undersigned, _____, dated _____ 20____.

As provided in my Will, I give and devise the following items to the following persons or institutions, as the case may be:

| **DESCRIPTION OF ITEM** | **NAME OF BENEFICIARY** |
|---|---|

_____ _____

***Client*** Date

# DESIGNATING BENEFICIARIES

Whether it is a CD, savings account, money market account, IRA or pension or other retirement account many individuals do not understand how the investment passes upon death and mistakes abound in naming beneficiaries. Many individuals do not remember exactly how they designated the beneficiaries on their intangible assets. You should review the beneficiary designations on all of your investments and life insurance policies to be sure that they do not have to be revised to properly achieve your goals.

Beneficiary Designation: "To my children equally"

This is a common designation for the beneficiary of an account or investment. This designation does not consider what happens to a child's portion if one of the children pre-deceases the parent. In the case of multiple beneficiaries often the language provides that the asset is to be paid equally to the surviving beneficiaries, which may not be the intent of the parent or individual.

The Fix:

The fix is the same as it is in the will or a trust. Simply add the Latin phrase "per stirpes" to the designation. "Equally to my children, per stirpes". This phrase basically means that the grandchildren basically stand in for their deceased parent (the child of the original deceased) and that the predeceased child's share is to be divided equally among that child's children.

This also applies to individuals who are leaving assets to people other than their children. In the event the person you all devising the asset predeceases you consider whether you want their share to be distributed to their children in equal shares or to other beneficiaries.