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SUPPLEMENTAL DEFINITIONS SHEET

Last Will and Testament

- A will is a legal document that describes how you would like your property distributed after your death.
- A will does not become effective until after death, at which point the “executor” or “personal representative” admits the will to court to begin the process of “probate administration.”
- Typically, a will appoints an executor or personal representative to handle the administration of your estate. In addition, a will can appoint a trustee to manage any trust created under the will and can contain a guardian nomination for a minor child.

Executor

- A personal representative (or executor) is the person or entity responsible for administering your estate.
- In general, responsibilities of an executor include:
 - Managing the deceased’s property;
 - Paying valid creditor claims;
 - Filing tax returns;
 - Distributing assets to beneficiaries; and
 - Keeping accurate records.
- **Qualities to Consider**
 - Among the most important qualities to consider when selecting an executor is trustworthiness. It is important that you trust this person to carry out your desires as stated in your will.
 - The executor should be a person who is organized, as the position does entail receiving and distributing the estate, as well as keeping accurate records.
 - You should not appoint someone who is a procrastinator, as some responsibilities are time sensitive and require careful attention to deadlines.
 - It is not always necessary to appoint someone with a great deal of financial savvy, as your executor can retain the services of a professional, such as an attorney or financial planner, to assist with some of the more complicated aspects of administering the estate. However, a person with some financial savvy would limit the expenses of administering the estate.

Guardian

- A guardian is a person appointed by the court and vested with the legal authority to make personal and/or property decisions for another person, such as a minor or disabled child.
- In a will, you can nominate a person to serve as guardian for your minor or disabled child should you pass away before your child reaches the age of 18.
- In general, a guardian for a minor child will have all the same powers and responsibilities as the parent of a minor child.
- **Qualities to Consider**
 - When selecting a guardian for a minor or disabled child, the most important question you should ask yourself is—who do I trust to raise my child if I am unable to?

Trustee

- A trustee is a person vested with the legal authority to manage and administer a trust.
- A trust is a legal arrangement whereby a person, the trustee, holds the property for the benefit of another person, the beneficiary.

- The trustee must administer the trust for the purposes specified in the document.
- Among the duties of a trustee are:
 - Investing trust assets;
 - Keeping accounts;
 - Making distributions to the beneficiaries;
 - Filing tax returns; and
 - Reporting to the beneficiaries as the trust may require.
- **Qualities to Consider**
 - An ideal trustee is one that you believe can carefully follow the trust’s instructions for how assets are to be managed and distributed.
 - Because the position of trustee entails a great deal of record keeping, your trustee should be organized and have the ability to keep accurate records.
 - The trustee should be one who has the ability to say “no.” The trustee is often directed to make distributions to beneficiaries based upon a standard defined in the trust. In some instances, the trustee must be able to abide by the trust instrument and say no when appropriate.
 - Because of the consideration above, a trustee that has a good relationship with the beneficiary is ideal.
 - Consider choosing a trustee who will be inclined to seek professional advice. Some responsibilities require advance skill or knowledge, such as investing and preparing tax returns. Therefore, an ideal trustee is one that can realize his or her limitations and feel comfortable seeking professional assistance.

Durable Power of Attorney

- A durable power of attorney is a legal document that provides written authorization for one individual, an agent, to act on your behalf, as the principal, for the purposes stated in the document.
- The term “durable” simply means that the document remains in effect once you become incapacitated, a legal term meaning that you no longer have the capacity to make certain decisions.

Durable Power of Attorney for Finances

- A durable power of attorney for finances allows an agent to make financial decisions for you.
- For example, you can authorize an agent to:
 - Write and cash checks;
 - Collect your debts;
 - Invest your money;
 - Prepare and file your tax returns; and
 - Sell or lease your property.
- **Qualifications to Consider**
 - While sometimes the position of an “agent” is referred to as an “attorney-in-fact,” he or she certainly does not have to be an attorney.
 - The most important consideration to keep in mind when selecting an agent is that you should only choose a person you trust. A durable power of attorney often confers upon the agent a tremendous amount of authority. You should feel comfortable conveying that power without hesitation.
 - Consider nominating someone that is familiar with your financial situation.
 - Consider nominating a person whose judgment and values align with your own with regards to financial matters.

Durable Power of Attorney for Health Care

- A durable power of attorney for health care allows an agent to make medical and health care decisions on your behalf if you are too injured or ill to speak for yourself.
- Additionally, a power of attorney for health care grants to the agent the power to:
 - Access your medical records;
 - Provide consent to medical procedures; and

- Consent to admission to an assisted living, nursing home, or an adult family home.
- **Qualifications to Consider**
 - This person should be someone that you trust, and someone that you think will be able to make a reasoned decision that is in-line with your preferences regarding health care.
 - This person should know you well enough to know generally what kind of medical intervention you would want or not want.
 - Consider selecting a person capable of making a medical decision not based on what that person would want, but based on what you would want.
 - The ideal agent under a durable power of attorney for health care should be one that is not overly emotional, as the agent may be called upon to act in a time of crisis.

Can't Think of Anyone to Name for Any of the Above Positions?

- Sometimes it is difficult to think of an appropriate person to nominate for one of the above positions. Maybe you don't have anyone that you can trust with the position, or maybe you wish to not impose the responsibilities of the position on a loved one.
- If that is your case, there are professional companies that offer these services.
- For example, you can hire a company to act as your agent under a power of attorney, an executor of your estate, and as a trustee of a trust.
- Of course, such companies charge fees; therefore, cost is a consideration to keep in mind.
- We are happy to discuss this option with you further if you feel as though you would benefit from a professional handling these matters for you.

Health Care Directive/Living Will

- A living will (also called a health care directive or advance healthcare directive) is a way for a mentally incapacitated individual to terminate medical care and to permit a dignified death.
- A living will generally takes effect only if you are unable to communicate your own wishes and you are in a permanent unconscious condition or have a terminal illness that will lead to death.
- A living will generally provides instructions regarding your preference for artificially provided hydration and nutrition.
- This document can also provide instructions for medication or surgery deemed necessary solely to alleviate pain.
- This document can be a helpful way to ensure that either you remain on life support, if that is important to you, or that you are taken off life-sustaining treatment, if you would prefer that.

Disposition of Remains

- This document allows you to control what happens to your body after death.
- Additionally, this document can give another person the right to make arrangements for the disposition of your body after death.
- This document can contain your preferences regarding burial or cremation.
- It can also provide instructions for where you would like your ashes spread or what kind of funeral service you would like.