A Will is the first of three important documents you should have prepared. A Will is the written expression or direction to one’s family of their wishes regarding the distribution of their property and management of their affairs after they die. A valid Will must be in writing and must be signed by the person making the Will. Two witnesses must witness the signing of the Will and sign the Will themselves.

Why Do You Need a Will?

Reason 1 – Creating a valid Will ensures that your property will be distributed according to your wishes after your death. If you don’t make a valid Will while living, when you die your property is going to be distributed per the terms of Georgia law. This process is called “intestate succession” and it makes no allowances for your personal wishes.

Reason 2 – Creating a valid Will allows you to select the person or persons who you want to be in charge of the management of your estate. This person is called the “Executor”. The Executor gathers your assets, manages your estate, pays your debts, and distributes your property according to the law and the terms of your Will. Without a Will, the Court will select the person who will be the representative of your estate.

Reason 3 – A properly drafted Will can make the Probate process cheaper and more efficient for your family. For example, in your Will you can relieve your Executor of having to post a bond and file inventories and returns with the Probate Court. In your Will you can also grant certain powers or authority to your Executor so that they do not have to petition the Probate Court to take certain actions on behalf of the estate.

Reason 4 – You can create a “testamentary trust” within your Will rather than leaving property directly to certain beneficiaries. For example, if you have minor children you will need to create a trust to receive their share of your estate as children cannot legally inherit property directly. This also allows you to select the person who you want to manage the Trust for your child’s benefit. This person is called a “trustee”. Testamentary trusts also work well as a planning tool if you have a beneficiary who is irresponsible with money or a beneficiary who is disabled and is receiving government benefits.

Reason 5 – If you have minor children you can state in your Will who you prefer to serve as their guardian if one is ever needed. If you have created a valid Will and named a person to serve as guardian for your minor child the Court will respect your wishes and show preference to the named individual in guardianship proceedings.
While you might consider a Last Will and Testament as the most important legal document you will ever prepare. Yet while a Will directs the distribution of your property after you die, there are two documents that can have a huge impact on your quality of life and your care during your lifetime: a Financial Power of Attorney and an Advance Directive for Health Care. Both documents enable you to delegate to others certain decision-making powers in the ways that you feel are most appropriate, and to the extent that you want.

**What is a Financial Power of Attorney?** A financial power of attorney is a document that allows someone you trust to manage your finances if you ever lack the capacity to do so. Anyone whom you trust can be designated as your “Agent” to serve under your Power of Attorney. The document is “durable” because it lasts until your death or until you revoke the document, whichever comes first.

**Who Can Create a Power of Attorney? Who Can Serve?** In Georgia, any individual over 18 years of age who is a Georgia resident and who is legally competent can create a Power of Attorney. An agent may be anyone who is legally competent and over the age of 18. Often, your agent is a family member such as a spouse, sibling, or adult child.

**What is an Advance Directive for Health Care?** Georgia law allows you to appoint someone you trust – for example, a family member or close friend to decide about medical treatment options if you lose the ability to effectively communicate these decisions yourself. You can do this by using an Advance Directive for Health Care to designate the person or persons to make such decisions on your behalf. You can allow your health care agent to decide about all health care or only about certain treatments. You may also give your agent instructions. Your agent can then make sure that health care professionals follow your wishes and can decide how your wishes apply as your medical condition changes. Hospitals, doctors and other health care providers are guided by your agent’s decisions as if they were your own.

**To Find an Attorney Near You to Help with Your Planning:**
National Elder Law Foundation - nelf.org
National Association of Elder Law Attorneys - naela.org

**Additional Resources:**
POLST: Portable Medical Orders - polst.org
Care Managers -aginglifecare.org

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