Fact Sheet: Wills & Estate

There are three main estate planning forms:

1. Last Will and Testament
2. General Durable Power of Attorney
3. Healthcare Representative Designation

A Last Will and Testament is a document that says who gets ownership of a person’s property after the person dies. For example, a Will can state who gets your house when you die or who inherits your rare book collection.

A Will only controls probate property and, depending on how much you have, it may involve a probate court proceeding. Probate property includes everything you own, unless you have designated your beneficiary(ies) by some other acceptable means. In that case, things you left outside your Will by some other means become non-probate property.

Generally, non-probate property is property that has its own legally acceptable beneficiary form or beneficiary designation attached to it.

Life insurance is one of the most common types of non-probate property. This is because when a person purchases life insurance, he or she designates a beneficiary by signing a beneficiary form. So, the form and not the Will controls who receives the life insurance proceeds upon the insured’s death, not the Will.

Another common form of non-probate property is real estate owned as joint tenants with rights of survivorship. If Raymond and Robert own real estate as joint tenants with rights of survivorship and Raymond dies first, then Robert gets ownership of the property. It doesn’t matter what Raymond’s Will says about this real property, Robert gets ownership of it because the property becomes a non-probate asset by virtue of the deed attached to it.

If a person dies without a Will, then Indiana law says who gets ownership of the person’s probate property.

A General Durable Power of Attorney is a document that gives a person (the Attorney-in-fact) the right to act on behalf of and for the benefit of another person. A General Durable Power of Attorney is an important document because it allows someone to help you manage your financial affairs if you can’t anymore because you become incapacitated.

A Healthcare Representative Designation is a form that gives a person (the Healthcare Representative) the authority to make healthcare decisions for another person once this other person becomes incapacitated. You should have a Healthcare Representative Designation so that someone can decide what medical treatments for you to have if you can no longer make those decisions yourself.