

## **ESTATE PLANNING INFORMATION**

PLEASE COMPLETE THIS MATERIAL AS THOROUGHLY AS POSSIBLE. If you have any questions, please call our office at 770-640-1101, or you may e-mail Jeff Scroggin at [John@scrogginlaw.com](mailto:John@scrogginlaw.com) or David Bigger at [David@scrogginlaw.com](mailto:David@scrogginlaw.com).

When you return the information, please include:

- \* A copy of your present Will, if any; and
- \* A copy of any trust which you created, or in which you are a beneficiary or trustee.

**Please Note:** Your estate planning proposals will be based upon the accuracy of the information you provide below. If you have any questions regarding how to fill out the form, please call us or note your questions on the form.

If possible, prior to our meeting, we encourage you to review the basic estate planning information in "*Time For A Review*," which may be accessed on our website: [www.scrogginlaw.com](http://www.scrogginlaw.com). Our website includes additional tax, business and estate planning information. You may also want to complete a copy of "The Family Love Letter" as a part of your estate plan. Please ask for a copy at our initial meeting.

### **PERSONAL INFORMATION**

Date Completed: \_\_\_\_\_, 2012.

I. Full (Legal) Name: \_\_\_\_\_

Nickname: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Office Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Any prior marriages? Yes \_\_\_ No \_\_\_

If yes, does your divorce decree require any estate provisions? Yes \_\_\_ No \_\_\_

Are you a US Citizen? Yes \_\_\_ No \_\_\_

If no, do you intend to pursue citizenship? Yes \_\_\_ No \_\_\_

Do you wish to be Buried \_\_\_ or Cremated \_\_\_ (Check one)

Do you expect to receive a significant inheritance? Yes \_\_\_ No \_\_\_

If yes, in what amount? \$ \_\_\_\_\_ From whom? \_\_\_\_\_

Mother's Age (if living) \_\_\_\_\_ Check if Deceased \_\_\_\_\_  
Father's Age (if living) \_\_\_\_\_ Check if Deceased \_\_\_\_\_

Do your parents (if living) have incapacity documents in place?  
Yes \_\_\_\_\_ No \_\_\_\_\_ Unknown \_\_\_\_\_

II. Residence Address: \_\_\_\_\_  
Street Address

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

County of Residence: \_\_\_\_\_

Office Address: \_\_\_\_\_  
Street Address

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Where should we send correspondence, bills and documents?  
Office \_\_\_\_\_ Home \_\_\_\_\_ Other \_\_\_\_\_

III. Children:

Full Legal Name of Each Child	Date of Birth	Check if Married	Custodial Parent (if minor)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Do any of your children have physical or mental handicaps? Yes \_\_\_\_\_ No \_\_\_\_\_  
If so, do you wish to make provisions for these handicaps in your Will?  
Yes \_\_\_\_\_ No \_\_\_\_\_

How many grandchildren do you have (if any)? \_\_\_\_\_

Have you provided for the education of your children / grandchildren? Yes \_\_\_\_\_ No \_\_\_\_\_  
Do you want to discuss ways to provide for their education? Yes \_\_\_\_\_ No \_\_\_\_\_

Do your children have custodial accounts? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, who is the custodian. \_\_\_\_\_  
If yes, what are the values? \_\_\_\_\_

IV. Other Advisors:

	Name	Phone
CPA	_____	_____
Life Insurance Agent	_____	_____
Property and Casualty Insurance Agent	_____	_____
Financial Planner	_____	_____

Do you need a Referral to a CPA, Financial Planner, Insurance Agent or Other Advisor?  
 Yes \_\_\_\_ No \_\_\_\_

V. Please list anyone (in addition to you) who should receive a copy your final documents:

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____

VI. Have you created any Trusts? Yes \_\_\_\_ No \_\_\_\_ **If yes, Please bring a copy to our meeting.**

VII. Are you a beneficiary of any Trusts? Yes \_\_\_\_ No \_\_\_\_ **If yes, Please bring a copy to our meeting.**

VIII. Who referred you to our firm? \_\_\_\_\_

IX. Have you:

- \* Reviewed our Article on "*Time for a Review*" Yes \_\_\_\_ No \_\_\_\_
- \* Prepared a list of how your personal property will be distributed upon your death?  
Yes \_\_\_\_ No \_\_\_\_
- \* Completed a Family Love Letter? Yes \_\_\_\_ No \_\_\_\_
- \* Completed an Ethical Will? Yes \_\_\_\_ No \_\_\_\_

X. If you and all your descendants died, how would your assets be disposed of?

- \* All to your heirs at law? Yes \_\_\_\_ No \_\_\_\_
- \* Other (e.g., certain family members, charity(ies)) \_\_\_\_\_  
\_\_\_\_\_

## DECISION MAKERS FOR YOU

Please provide the **FULL LEGAL** names for the persons, or entities, to serve in the capacities listed below. If you are not sure who to name, leave the lines blank, and we will discuss the options. For a general discussion of the roles of the various decision makers, please review the information beginning on page 9. (Please keep in mind, this list is only a portion of the matters we will discuss in preparing your estate plan.)

- A. **EXECUTOR:** (the person or entity who will administer your estate). Check here if you wish to have more than one person serve at the same time (i.e. Co-Executors) \_\_\_\_

Primary: \_\_\_\_\_

Successor: \_\_\_\_\_

2nd Successor: \_\_\_\_\_

3rd Successor: \_\_\_\_\_

Do you want your children to be able to remove an Executor? Yes \_\_\_\_ No \_\_\_\_

- B. **TRUSTEE:** (the person or entity who will administer any trusts you create). Check here if you want to have more than one person serve at the same time (i.e., Co-Trustees) \_\_\_\_

Primary: \_\_\_\_\_

Successor: \_\_\_\_\_

2nd Successor: \_\_\_\_\_

3rd Successor: \_\_\_\_\_

Do you want your children to be able to remove a Trustee? Yes \_\_\_\_ No \_\_\_\_

- C. **GUARDIAN FOR MINOR CHILDREN:** (the person who would raise your children after your death).

Primary: \_\_\_\_\_ Relationship: \_\_\_\_\_

Successor: \_\_\_\_\_ Relationship: \_\_\_\_\_

2nd Successor: \_\_\_\_\_ Relationship: \_\_\_\_\_

D. **HEALTH CARE AGENT / HEALTH CARE POWER OF ATTORNEY:** (the person who would make your medical decisions if you were incapacitated).

Primary: \_\_\_\_\_

Successor: \_\_\_\_\_

2nd Successor: \_\_\_\_\_

E. **AGENT / GENERAL POWER OF ATTORNEY:** (the person or entity who would handle your financial and property decisions if you were incapacitated).

Primary: \_\_\_\_\_

Successor: \_\_\_\_\_

2nd Successor: \_\_\_\_\_

F. Do you want your family to be encouraged to seek the advice of any of your Advisors if you die or become incapacitated? Yes \_\_\_\_ No \_\_\_\_ . If yes, which Advisors: \_\_\_\_\_

\_\_\_\_\_

## FINANCIAL INFORMATION

<u>Asset</u>	<u>Individual</u>	<u>Jointly Held</u>	<u>Joint Holder's Name</u>
Cash & CDs	\$ _____	\$ _____	_____
Marketable Securities	\$ _____	\$ _____	_____
Retirement Accounts	\$ _____	\$ _____	_____
IRAs	\$ _____	\$ _____	_____
Residence( <i>equity</i> )	\$ _____	\$ _____	_____
Vacation Home( <i>equity</i> )	\$ _____	\$ _____	_____
Office Building ( <i>equity</i> )	\$ _____	\$ _____	_____
Other Real Estate ( <i>equity</i> )	\$ _____	\$ _____	_____
Closely Held Businesses Check if you Own 100% ____	\$ _____	\$ _____	_____
Personal Property	\$ _____	\$ _____	_____
Other Assets	\$ _____	\$ _____	_____

Please list any other liabilities which have not been used in the above computations.

Creditor:	Debt
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**Life Insurance.** Please provide the following information on any life insurance carried on your life.

Name of Insurance Co.	Policy Type	Owner	Face Amount/ Death Benefit	Cash Value
1)			\$	\$
2)			\$	\$
3)			\$	\$
4)			\$	\$
5)			\$	\$

Have you borrowed against the Cash Value of any policy? Yes \_\_\_\_ No \_\_\_\_

**Life Insurance Beneficiary Designations** (corresponding to numbered policies above)

1) Primary: \_\_\_\_\_ Contingent: \_\_\_\_\_

2) Primary: \_\_\_\_\_ Contingent: \_\_\_\_\_  
 3) Primary: \_\_\_\_\_ Contingent: \_\_\_\_\_  
 4) Primary: \_\_\_\_\_ Contingent: \_\_\_\_\_  
 5) Primary: \_\_\_\_\_ Contingent: \_\_\_\_\_

**Retirement Assets**

Who are the designated beneficiaries of your retirement accounts and IRAs?

Primary: \_\_\_\_\_

Secondary: \_\_\_\_\_

Have you confirmed the above beneficiary designations with each account administrator?  
 Yes \_\_\_\_ No \_\_\_\_

Do you own any assets which have a low basis? Yes \_\_\_\_ No \_\_\_\_

How much difference, in the aggregate, is there between the fair market value and basis of your assets? \_\_\_\_\_

**Other Issues:**

- Do you own real estate in another state or country? Yes \_\_ No \_\_. If Yes, where \_\_\_\_\_
- Do you own or control any foreign based bank accounts, financial assets, brokerage accounts or other assets outside the United States?
- Yes \_\_ No \_\_. If Yes, where \_\_\_\_\_
- Do you know about your reporting requirements? Yes \_\_ No \_\_
- Do you expect any of your assets to significantly appreciate in the next few years?  
 Yes \_\_ No \_\_. If Yes, which asset \_\_\_\_\_
- Do you own any interest in an S Corporation? Yes \_\_ No \_\_
- Do you have a Buy-Sell Agreement for any of your businesses? Yes \_\_ No \_\_
- If you own a business, when was the last review made of your business structures? \_\_\_\_\_
- Do you expect to inherit a family business? Yes \_\_ No \_\_
- Do you expect to pass your business to a family member(s)? Yes \_\_ No \_\_
- Do you carry a personal umbrella property and casualty insurance policy? Yes \_\_ No \_\_
- If Yes, in what amount \$ \_\_\_\_\_
- Had an audit conducted of your Property & Casualty Insurance within 2 years? Yes \_\_ No \_\_
- Had an audit conducted of your Business & Casualty Insurance within 2 years? Yes \_\_ No \_\_
- Do you own a Disability Policy? Yes \_\_ No \_\_
- Do you own a Long Term Care Policy? Yes \_\_ No \_\_.
- Do you own a cemetery plot? Yes \_\_ No \_\_. If Yes, where? \_\_\_\_\_
- Have you made burial arrangements? Yes \_\_ No \_\_. If Yes, where? \_\_\_\_\_
- Have you made significant gifts in the past? Yes \_\_ No \_\_ How Much? \$ \_\_\_\_\_
- When are you expecting to retire? \_\_\_\_\_
- Do any of your heirs owe you money? Yes \_\_ No \_\_ Which Heir? \_\_\_\_\_ How Much? \$ \_\_\_\_\_
- Do you want it to be repaid as a part of his or her inheritance? Yes \_\_ No \_\_

Please list any other issues or questions which you would like to discuss:

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## **Health Care Agent / Health Care Power of Attorney**

The Georgia Advance Directive for Health Care (the “Advance Directive”) is a statutory form which incorporates both a Living Will and a Health Care Power of Attorney. The Advance Directive is an important piece of almost every estate plan.

A Living Will is a written declaration indicating your preference for medical treatment in the event you become unable to communicate such preferences. These include whether or not life-sustaining measures should be used in certain end of life situations. While a Living Will provides guidance for life sustaining decisions, it does not address the making of ongoing decisions in the event of a person’s incapacity. Designating an agent under a health care power of attorney is necessary for this purpose.

A Health Care Power of Attorney (also called a Medical Power of Attorney) allows you to nominate an Agent to make medical decisions for you upon your incapacity. The document can name successor power holders (i.e., successor Agents). It also permits you to state your preferences on the appointment of a court-appointed Guardian, should one become necessary.

Although a Living Will and a Health Care Power of Attorney both deal with life-sustaining issues, we generally recommend signing both documents (or both sections, in the case of the Georgia Advance Directive). Having a Health Care Power of Attorney ensures your Agent, not the doctors, have the final say in treatment. But, if it is clear life cannot be sustained, the Agent can step back and allow the Living Will to take effect. “*This is his decision, not mine*” makes it much easier psychologically for the Agent.

Virtually all states provide that an Agent under a Health Care Power of Attorney has priority decision-making over both the principal’s Living Will and any court-appointed Guardian. The statute may also provide that the Health Care Power of Attorney can even extend beyond the principal’s death if “necessary to permit anatomical gifts, autopsies or disposition of remains.”

Most states provide that a health care provider or other person, who acts in good faith in reliance upon the direction of the Agent named in a Health Care Power of Attorney, is protected and released from liability. State statutes also limit the liability of Agents who act in good faith.

Your Agent’s role will generally last from the time of your incapacity to the time of your death (and may include some decisions after your death). Because of the potential lengthy time period, it is generally advisable to appoint at least two or three successor Agents.

Married clients usually name their spouse as their Agent. However, if the marriage has not been in existence long, some will name another family member. We generally advise clients not to name emotional individuals or children under age 30 as Agents (because they may not be able to emotionally handle the required decisions). Naming someone who has medical training can be beneficial.

It is especially important that unmarried individuals appoint Agents and nominate Guardians to minimize the risk of fights over who should act on their behalf. As the Terri Schiavo conflict in Florida demonstrated, questions can even be made about a spouse’s right to make medical decisions.

State statutes may not recognize multiple Agents. Moreover, if two or more persons are named, questions can arise of whether they must unanimously agree or are able to act unilaterally. Because of possible conflicts, we generally recommend that you appoint only one Agent at a time. We also recommend that you name two or more successors.

## **Agent / General Power of Attorney**

A General Power of Attorney is another critical piece of estate planning. The basic purpose of the power of attorney is to appoint someone (an “Agent” or “Attorney-in-fact”) to oversee your assets and make financial decisions for you, if you become incapacitated or unable to make those decisions for yourself. For this reason, the power of attorney should be a “durable” power – that is, the power is effective even if you become subsequently incapacitated. State laws vary on whether powers of attorney are durable, absent specific language in the document. Therefore, your power of attorney should specifically address the impact of incapacity.

Additionally, you may only want the power of attorney to become operative should you become incapacitated. A “springing” power of attorney provides that the Agent has no authority until you become incapacitated. If this is the case, your power of attorney should specify how your incapacity is determined.

Having a general power of attorney can ensure a smooth transition of the management of your assets. If you lose capacity to make your own decisions and do not have a general power of attorney in place, a court appointed Conservator may be required. This will most assuredly result in unnecessary expense (e.g., cost of a bond and attorney’s fees) and time delays, not to mention require ongoing court oversight and transactional restrictions on your Conservator’s management of your assets.

In most cases, it is advisable to grant broad authority to your Agent, as there are a myriad of issues that can arise in managing your assets and income. Additionally, as third parties will be relying on the document in determining your Agent’s powers, the power of attorney should provide specific, detailed grants of authority to your Agent. If you have doubts about an Agent’s (or potential Agent’s) judgment, it is best not to name that person!

Your Agent’s role will generally last from the time of your incapacity until the time of your death. As this is a potentially lengthy time period, it is generally advisable to appoint successor Agents.

Married clients often name their spouse as their initial Agent. However, a spouse is not always the best option – perhaps it is a new marriage, or the spouse is simply not comfortable managing finances. We also caution clients against appointing an Agent who may have conflicts with other family members. While family members are often the best choices, there are times when a corporate entity or trusted advisor is a better choice. Unmarried individuals may avoid family disputes by appointing an Agent.

Generally, it is advisable to appoint one Agent with successors, as opposed to naming Co-Agents to serve jointly. First, some states’ statutes may not recognize Co-Agents. Second, questions may arise on whether Co-Agents are permitted to act independently, or whether all decisions must be made jointly.

As state laws vary, it is important to ensure your power of attorney full complies with your applicable state law.

## **Executor (Personal Representative)**

An Executor (known in some states as a “Personal Representative”) has the primary responsibility of administering your estate after your death.

The Executor’s responsibilities include:

Initiating the probate of your Will in the county in which you resided at your death;

Gathering and safeguarding your assets;

Paying your legal debts;

Filing any required state and federal estate or income tax returns; and

Distributing your assets to your beneficiaries as directed by your Will.

Typically, the role of the Executor will last from one (1) to three (3) years. However, in many cases, much of the administration will be performed by an attorney and CPA employed by your estate.

Married clients often name their spouse as their Executor. However, a spouse is not always the best option – perhaps it is a second marriage, or the spouse is simply not comfortable serving in that capacity. While family members are often the best choices, there are times when a corporate entity or trusted advisor is a better choice. If you have named an Agent under a general power of attorney, it may make sense to name the same person as your Executor, as your Agent may already be familiar with your assets.

If desired, two or more persons can serve as Co-Executors. Often, the use of Co-Executors makes the most sense in particularly complex situations or second marriages.

It is normally advisable to appoint two or three successor Executors in your Will to prevent the possibility of the office being vacant and the court having to appoint someone to serve.

The fees for an Executor can be set by the Will. Otherwise, state statutes will normally govern. In most states, the Executor is entitled to between 1-5% of the value of the estate for performing his or her fiduciary functions. If an institutional Executor is named, it is advisable to provide that the Executor’s fees are limited to the lesser of the statutory fees or the institution’s published fee schedule.

While state law may permit removal if an Executor breaches his fiduciary duty, proving such a breach can be an arduous task. Thus, it may be wise to grant someone the power to remove your Executor with or without cause. Such a grant of power under your Will can eliminate a costly court battle (which would reduce the size of your estate). Of course, such a power may serve to be a source of conflict if exercised arbitrarily.

## Trustee

There are a wide variety of reasons that it may make sense to transfer assets to a trust during your life or upon your death. A Trustee is a person or institution employed to manage assets held in a trust. The Trustee is the legally recognized owner of such property. He or she holds title for the benefit of one or more “beneficial owners” (i.e., the trust beneficiary(ies)). The Trustee’s responsibilities generally include:

Managing, investing and accounting for the assets placed in his or her care.

Distributing the trust’s income as required by the trust instrument, or by the Trustee’s discretion if permitted by the trust instrument.

Distributing the trust’s principal, as allowed by the trust instrument, or by the Trustee’s discretion if permitted by the trust instrument.

Filing required state and federal income tax returns for the trust.

Depending on the trust’s beneficiaries and the trust’s purpose, the Trustee may have broad discretion in making distributions of income and principal. Additionally, the role of Trustee can be a lengthy responsibility that may last for decades (e.g., a trustee of a trust for a young child). Because of the length of service and the trustee’s fiduciary responsibilities, the person selected should have a proven capability to manage your investments and should be someone whose judgment you trust. Also, it is advisable to name one or more successor trustees or have the trust instrument detail a process for appointing successors.

You may choose to have more than one person serve as Trustee. Although the use of “Co-Trustees” is a bit more cumbersome, it may offer definite advantages over the use of one Trustee, particularly when you do not have one person who can adequately fill all the roles of Trustee. Unless otherwise provided in the trust instrument, any decision by Co-Trustees normally requires the affirmative vote of a majority of the Co-Trustees.

The fees for a Trustee can be set by your Will or the trust instrument. Otherwise, state statutes will normally govern. In most cases, the Trustee receives from 1-3% of the value of the trust for performing Trustee fiduciary functions. If an institutional Trustee is named, it is always advisable to provide that the Trustee’s fees are limited to the lesser of the statutory fees or the published fee schedule of the institution. In many cases, it is important to permit someone to remove the Trustee. Most states require a breach of fiduciary duty as a condition of removal and proving such a breach can be arduous task. The Trustee will normally remain in control of the trust during such a contest and have its legal costs be paid from trust assets. Granting a named beneficiary (e.g., a spouse or all adult children) or other party the ability to remove a Trustee with or without cause can eliminate these costs and delays. However, it may serve as a new source of conflict if the removal is arbitrary.

## **Guardian for Minor Children**

If you have minor children (i.e., under age 18), it is advisable to appoint someone to raise the children in the event you and your spouse pass away. This person is the “Guardian.”

The Guardian will have the day-to-day responsibilities for the physical welfare and care of your children. This role differs from the role of Trustee, who has responsibility for assets.

Nominating a Guardian under your Will provides the court guidance by stating your preferences. However, the court will nevertheless make an independent evaluation. For example, if you are divorced and have custody of your children, the court will normally give custody to your ex-spouse, unless he or she does not desire custody or is clearly unfit. If you nominate a non-blood relative, the court may instead grant the guardianship to a competent blood relative who requests custody. Still, your nomination provides strong guidance to the court in making its determination and may reduce family disputes over custody.

We generally advise that the Guardian not be the sole Trustee of any trust for the benefit of minor children. By having an independent Trustee, the Guardian and Trustee can monitor each other’s activities.

If there are particular family members who you do not want to raise your children (e.g., an alcoholic brother), we strongly advise you to place a letter with your estate planning documents clearly stating why you have chosen your nominated Guardian(s) and explaining why you have not chosen other family members.

It is advisable to appoint two or three successor Guardians in the event the appointed parties are unable or unwilling to serve.

If your child is an adult but has significant physical or mental impairment, you generally do not have the right to appoint a Guardian for the child. As an adult, your child will normally have to go through guardianship proceedings so that a Guardian will have legal authority to act for the child.