

Estate Planning to Preserve Family Wealth and Empower End-of-Life Dignity

Presented by Philadelphia VIP
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Today's Presenters

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About Philadelphia VIP

Our Mission

Philadelphia VIP leverages the **powerful resources of the community** to provide quality volunteer legal services and ensure **access to justice** for low-income Philadelphians.



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About Philadelphia VIP

Why Legal Volunteers?



Second poorest large city in the US
 Civil justice gap
 Volunteers can help close the gap!

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About Philadelphia VIP

Our Clients

- Individuals and families
 - Average Income for Household of 1 - \$16,995
 - Housing/homeownership, family law, estate planning, etc.
- Small businesses/nonprofits
 - Low-income business owners
 - Nonprofits serving Philly



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About Philadelphia VIP

Support for Volunteers

- Staff Attorneys
- Pro Bono Case Managers
- Volunteer mentors
- Resources and guides
 - Template wills and other docs
- Notaries and office space



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Your VIP Case File

Sample case summary:

62-year-old client with medical issues is seeking assistance creating estate planning documents. Client would like to create a **will, as well as both a healthcare and financial power of attorney**. Client owns her house with her deceased husband as tenants by the entireties. They had two children together, and he had a child from a prior relationship. She would like to leave the house to their daughter who lives there with her but provide for the other children as well. A volunteer is needed to draft documents in accordance with clients wishes.



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Estate Planning Overview

Common Life Planning Documents

- Financial Power of Attorney
- Healthcare Power of Attorney
- Living Will
- Will



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Estate Planning Overview

Common Life Planning Documents (cont.)

Some definitions:

Powers of Attorney (both Healthcare and Financial): Allow for a named agent to manage a principal's affairs when the principal can no longer do so independently

Advance Healthcare Directive (AHD): A healthcare power of attorney, a living will, or a document combining the two



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Financial Powers of Attorney (FPOA)

General vs. Limited

General	Limited
• Agent can manage all aspects of principal's finances	• Tailored to grant only specific powers to agent
• Can sell home, access bank account, manage income, pay bills	• E.g.: Agent can access one bank account



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Financial Powers of Attorney (FPOA)

Durable v. Springing

Durable

- Remains effective if the principal becomes incapacitated
- Once client executes FPOA and the agent signs the acknowledgement, it takes immediate effect

Springing

- Only takes effect upon the occurrence of a certain event
 - E.g.: The principal's incapacity
- Not recognized in most states anymore
- It is also hard to find doctors willing to make the necessary determination of principal's mental/physical disability
- **Not recommended**



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Financial Powers of Attorney (FPOA)

Drafting and Execution

- Client should pick an agent and an alternate or successor agent they trust completely
- The FPOA **MUST** include:
 - A **statutory notice** signed by the principal
 - **Acknowledgments** executed by the agent(s)
- Execution: Sign and date in view of two witnesses, **and** a notary.
- Client and witnesses must have unexpired government issued ID's to present to the notary
- Principal **MUST** execute the document before a notary



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Financial Powers of Attorney (FPOA)

Drafting and Execution

- Agent's Acknowledgment
 - Can be signed later
 - Does *not* need to be notarized or witnessed
 - Although, VIP recommends the Agent sign the acknowledgment in front of the principal/client
- Agent cannot use the FPOA until they sign that acknowledgment.
 - Can be a tool for a principal who is not yet ready to give agent the powers.
 - Execute document and keep somewhere safe so agent has not yet signed and cannot yet use. But agent needs to be aware of its existence and where it is located. If something happens to the principal and the agent doesn't know the POA exists or where it is, it serves no purpose.



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Healthcare Powers of Attorney (HPOA)

Powers Granted to Agent

- Agent makes healthcare decisions when principal no longer can
 - Importance of choosing a trustworthy agent
 - Again, use caution naming multiple agents
- Medical professionals must try to communicate with patient first
 - Even if patient has a healthcare power of attorney



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Healthcare Powers of Attorney (HPOA)

Drafting and Execution

- The client must choose trusted persons to be the Agent and the Alternate Agent
 - The agent should be trustworthy and should be aware of the client's preferences, beliefs, and values
 - Joint (Co) Agents: must act jointly, not independently
- Review all of the powers with the client
 - Client can strike any if desired: Client should initial after striking
 - Powers client does not want agent to have can also be deleted
- Execution: Sign and date in view of two witnesses, and a notary if possible.
- Client must have an unexpired government issued ID to present to the notary
 - Can be **FULLY** executed without a notary



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Living Wills

Purpose and Terminology

- Purpose: Client outlines their wishes, to be followed when client has an end-stage medical condition
- Definition: "End-Stage Medical Condition"
 - Encompasses chronic, progressive, fatal illness of unknown duration
 - Only one physician needed to certify end-stage
 - Not intended to prevent treatment if patient would benefit from treatment



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Living Wills

Drafting and Execution

- Discuss client's preferences: Determine whether "checklist" or statement format is appropriate
- Review document carefully with client
- Execution: Sign and date in view of two witnesses, and a notary if possible. Client must have an unexpired government issued ID to present to the notary.
 - Can be **FULLY** executed without a notary.
- Communication and Dissemination
 - Discuss the importance of sharing values and decisions with loved ones
 - Provide copies of documents to loved ones and healthcare providers



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Simple Wills

LAST WILL AND TESTAMENT OF XYZ

I, XYZ, residing at 123 Number Street, Philadelphia, PA, being of full age, sound mind and under no restraint declare this to be my Last Will and Testament and hereby revoke all prior wills and codicils.

FIRST: I direct that the expense of my last illness and funeral be paid out of my estate as soon as may be convenient after my death.

SECOND: I appoint my daughter, ABC, of 456 Tree Street, Philadelphia, Pennsylvania as Executrix of this my Will. I direct that my Executrix shall not be required to furnish security or to give bond for the faithful performance of her duties. In the event that she should predecease me or be unable to serve I designate as an alternative DEF of 789 Broad Street, Philadelphia, Pennsylvania.



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Simple Wills

Naming an Executor

- Executor: Acts as the estate's personal representative and carries out the provisions of the will
 - Should be someone the client trusts and who is willing to accept the responsibility
 - The executor does not have to be a named beneficiary
- Considerations about alternate, co-executors



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Simple Wills

Beneficiaries

- Things to consider when talking to client about beneficiaries:
 - Name and relationship to client
 - Are they minors?
 - Are any beneficiaries disabled?
 - Does the client intend to make charitable bequests?
 - Who are the contingent beneficiaries?
 - What about spouses?
 - Will client disinherit anyone?



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Simple Wills

Client's Property

- Things to consider when talking to client about **real property**:
 - How does client own the property?
 - Are there other owners? What is written on the deed?
 - Joint tenants with right of survivorship/tenants by entirety
 - Tenants in common
- Considerations about client's **personal property**:
 - Client can make specific gifts of cash, jewelry, furniture, etc.
- Residue clause
 - Any property that remains after specific bequests



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Coordination of Estate Plan and Will Substitutes

- Three will substitutes that are helpful for low-income clients
 - Life Insurance
 - Pensions with Named Beneficiaries
 - Joint Accounts or Payable on Death (P.O.D) Accounts
- Will substitutes are non-probate assets
 - They are not subject to the state's probate or intestacy laws (with the exception of payment of inheritance tax).
- Allow for property to be transferred upon the death of the owner
 - In most cases, a death certificate is all that is needed for the named beneficiary to transfer the property



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Simple Wills

Drafting and Execution

- Review document carefully with client
- Execution: Sign and date in view of two witnesses
 - Will can be **FULLY** executed without a notary.
- Self-Proving Affidavit
 - ROW recommends it be a separate page from will signature page
 - Client and witnesses sign in front of notary – **must** be notarized
 - Client and witnesses must have an unexpired government issued photo ID's to present to the notary.



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Representing Your VIP Client

- Estate planning matters:
 - Preserve intergenerational wealth
 - Help families make difficult decisions on loved ones' behalf
 - Create space for families to have conversations about what happens next



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Representing Your VIP Client

Counseling the Client

- Use the training manual and estate planning questionnaire!
- Discuss agents/alternates, beneficiaries, all powers granted under POAs, hard conversations about end-stage conditions
- Things to consider:
 - Providing legal counsel versus substituting your judgment
 - Influence of family members who may be present
 - Importance of listening to your client's story to decide what legal counsel is most appropriate
 - Discuss with VIP if any issues arise, including concerns about your client's capacity and/or inquiries about legal issues not related to estate planning



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Requirements for Execution

Document	Notarization?	Witnesses?	Suggestions from VIP
Will	Required for a will to be self-proving, but not required to be valid	Required: 2 disinterested witnesses	Send document to client to execute in front of two witnesses and a notary
Financial POA	Required	Required: 2 disinterested witnesses	Send document to client until a notarization appointment can be made
Advance Healthcare Directive	Not required (but suggested!)	Required: 2 disinterested witnesses	Send documents to client to execute in front of two witnesses

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Questions?

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- Available estate planning cases: <https://www.phillyvip.org/case-listings/?case-type=wills>
- Estate planning resources:
<https://www.phillyvip.org/volunteer/resources/?area-of-interest=wills-estates>



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