



So That's What Those Legal Terms Actually Mean

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A living will, also known as an advance directive, is not a will at all but a statement or declaration of what type of medical treatment a person wants to receive in the event he or she has a terminal illness or is in an irreversible coma.

Dear Jonathan: What is the difference between an executor and a personal representative?

Jonathan Says: There is no difference, they mean the same thing. Some states use the term executor and other states use the term personal representative. An executor or personal representative is the person who is in charge of administering a deceased individual's estate if a probate administration is required.

Dear Jonathan: What does it mean when someone dies intestate?

Jonathan Says: If a person has died intestate that means he or she died without making a last will and testament. If a person has made a last will and testament, he or she will be deemed to have died testate.

Dear Jonathan: What is the difference between a living trust and a living will?

Jonathan Says: A living trust is a revocable trust created by a person (known as the "grantor" or "settlor") during his or her lifetime, which holds and manages assets on behalf of, and distributes assets to, the beneficiaries named in the trust. If the grantor/settlor transfers assets to the trust during his or her lifetime, those assets will avoid probate upon the grantor's/settlor's death. A living will, also known as an advance directive, is not a will at all but a statement or declaration of what type of medical treatment a person wants to receive in the event he or she has a terminal illness or is in an irreversible coma.

Dear Jonathan: What is the difference between a power of attorney and a durable power of attorney?

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Jonathan Says: A power of attorney is a written document created by an individual (the “principal”) designating another person (the “agent”) to act on behalf of the principal. It terminates automatically upon the principal’s disability.

A durable power of attorney is a written power of attorney which does not automatically terminate upon the principal’s disability. Instead, it is designed to be used during the principal’s disability and will not automatically terminate until the principal’s death.

In order to make a power of attorney a durable power of attorney, special language needs to be inserted in the power of attorney which in essence states that the durable power of attorney shall not be affected by the principal’s disability. A durable power of attorney can be written so that it is effective immediately upon being signed, or it could be written as a springing durable power of attorney which means that it becomes effective only upon the principal becoming disabled.

Dear Jonathan: What is the difference between a revocable living trust and an irrevocable trust?

Jonathan Says: A revocable living trust is created by a person (known as the “grantor” or “settlor”) during his or her lifetime, which can be amended or revoked at any time while the grantor/settlor is alive and has legal capacity to do so. An irrevocable trust is a trust (i) that a person creates during lifetime which becomes irrevocable at its inception, or (ii) becomes irrevocable upon the individual’s death or legal incapacity. For instance, a revocable living trust becomes irrevocable upon the grantor’s/settlor’s death or legal incapacity.

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