



# THOMAS, MEANS, GILLIS & SEAY, P.C.

ATTORNEYS AND COUNSELORS AT LAW  
ESTABLISHED IN 1981

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## WHY A LAST WILL AND TESTAMENT ARE IMPORTANT

● **IF YOU DIE WITHOUT A WILL** (“intestate”) in Alabama, the Probate Court will appoint an administrator to distribute your money and other assets according to Alabama statutory law, which means:

- ◆ You have no control over who receives your personal property or other assets
- ◆ Your spouse may end up with less assets than he or she needs to live on
- ◆ Your assets may be divided between your heirs, some of whom you may not even know
- ◆ Your grandchildren or stepchildren might not receive anything from your estate
- ◆ You will not be able to name a guardian for any minor children you may have
- ◆ You will not be able to leave certain items of property to specific persons
- ◆ You will not be able to leave contributions to a church or charity
- ◆ If the court cannot locate any living relatives of your by blood or marriage, the state may end up taking title to your property.
- ◆ If you have a loved one receiving Medicaid benefits and they inherit from your estate, they could lose, at least temporarily, their eligibility for such benefits, which could be a serious problem if that loved one is being cared for by Medicaid in a nursing home.

● **IF YOU DIE WITH A VALID WILL:**

- ◆ You can leave your property to people and organizations of your choosing and make sure that your loved ones are taken care in accordance with your wishes.
- ◆ You can name a personal guardian to care for you minor children.
- ◆ You can name a trusted person to manage property you leave to your children.
- ◆ You can name the executor, who is the person who makes sure that the terms of your will are carried out, and you can choose to waive financial bonding requirements for the executor, and also avoid the expense of a court appointed administrator, which could easily cost much more than the cost of having us prepare you Last Will and Testament.
- ◆ You can avoid misunderstandings about your intentions and hopefully prevent or at least minimize disputes over who is entitled to your assets.
- ◆ You can spell out your desired funeral arrangements.

Alabama State Bar requires the following disclaimer: “No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.”



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## WHY A SPRINGING DURABLE POWER OF ATTORNEY IS IMPORTANT

- In the event that you become disabled, incapacitated, or incompetent, you can be prepared by having designated an Agent to step in and legally act on your behalf during such disability.
- Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That process takes time, costs money, and the court may or may not choose the person you prefer. In addition, under a guardianship or conservatorship, your representative may have to post a significant bond and may have to seek court permission to take planning steps that could be implemented immediately under a simple durable power of attorney.
- **With a Springing Durable Power of Attorney**, if you become disabled, incapacitated, or incompetent, **your loved ones could be permitted to handle your affairs, including:**
  - ◆ Accessing medical records and discussing your condition and treatment with your doctors.
  - ◆ Accessing information regarding your financial records, bank accounts, investment accounts, retirement accounts, pension plans, and insurance policies.
  - ◆ Employ and discharge your health care personnel; pay your medical expenses; receive, deposit, or assign your medical or disability benefits, and make arrangements for your long term care at your own home, or at a hospital, hospice, or nursing home.
  - ◆ Manage business interests and finances, pay taxes, and apply for benefits on your behalf.
  - ◆ Buy, sell, or manage your personal property or real estate, which may be necessary to care for your loved ones or to pay for your health care.
  - ◆ Institute, maintain, or resolve legal actions on your behalf.
  - ◆ Exercise and protect your rights as expressed in your Advanced Medical Directive.
  - ◆ Avoid costly bond requirements in event that a judicial proceeding is commenced to appoint a guardian or conservator to take charge of you, or to manage and conserve your property.

## WHY AN ADVANCED MEDICAL DIRECTIVE IS IMPORTANT

- Under Alabama law, you have the right to control the decisions relating to the rendering of your own medical care, including, without limitation, the decision to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness. Any competent adult may execute an Advanced Directive (living will) directing the providing, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition and hydration. Artificially provided nutrition and hydration cannot be withdrawn or withheld pursuant to the living will unless specifically authorized therein.
- You can specify a wide range of options that you would like the advanced directive to cover, such as receiving medical treatment that allows you to live as long as possible, or that you want to receive medical treatment unless you are in an irreversible coma, or that you decline any extraordinary measures and choose to die a natural death.
- You can also appoint a Health Care proxy to make health care decisions for you when you are unable to do so yourself, and to allow for your proxy to have access to your Protected Health Information.

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