

Estate Planning and Legal Considerations

Kevin F. Bress

Attorney at Law
Bress Raut Law, LLC

Towson, Bel Air, Columbia

Direct line: 410-339-6767

Kevin@BressRautLaw.com

This presentation is for educational purposes and should not be construed as tax, legal or investment advice.

What if I am unable to make decisions

Who can communicate with my doctors?

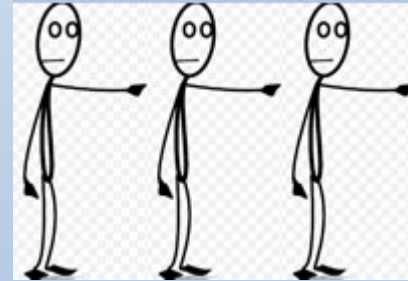
How do my financial affairs get managed

What if I die?



What do we do now?

When do we get ours?



Retirement Goals for Estate Planning

1. **Minimizing estate taxes imposed at death**
2. Managing your assets and health care decisions if you lose mental capacity
3. At death, ensure your assets transfer easily, without hassles at minimal cost

Minimizing Estate Taxes

- **Federal Estate Tax** – Imposed when decedent's assets exceed \$13 million - 40% tax on excess
- **Maryland Estate Tax** – Imposed when decedent's assets exceed \$5 million - 16% tax on excess
- **Maryland Inheritance Tax** – 10% tax imposed on niece/nephew, cousin, and non-family members

EXEMPT: spouse, child, grandchild, siblings, parents, step-children, charities

Retirement Goals for Estate Planning

1. Minimizing estate taxes imposed at death
2. **Managing your assets and health care decisions if you lose mental capacity**
3. At death, ensure your assets transfer easily, without hassles at minimal cost

Managing your assets if you lose mental capacity

- Assets can be inaccessible and frozen to spouse
- No person can sign your name to:
 - House deed
 - Withdrawals from retirement account
- *Need Power of Attorney*
- Without a POA, even a spouse may be forced to file for guardianship “over the property” in Circuit Court – *expensive, permanent and often contentious*

Managing your health care if you lose mental capacity

- Best to have a written designation of a “*health care agent*” for decision-making
- HIPAA – the *privacy act even applies to spouse*
- Without a directive – disagreements about medical decisions may need to go to a judge in Circuit Court
- Without directive – family may need to have a “guardian of the person” appointed

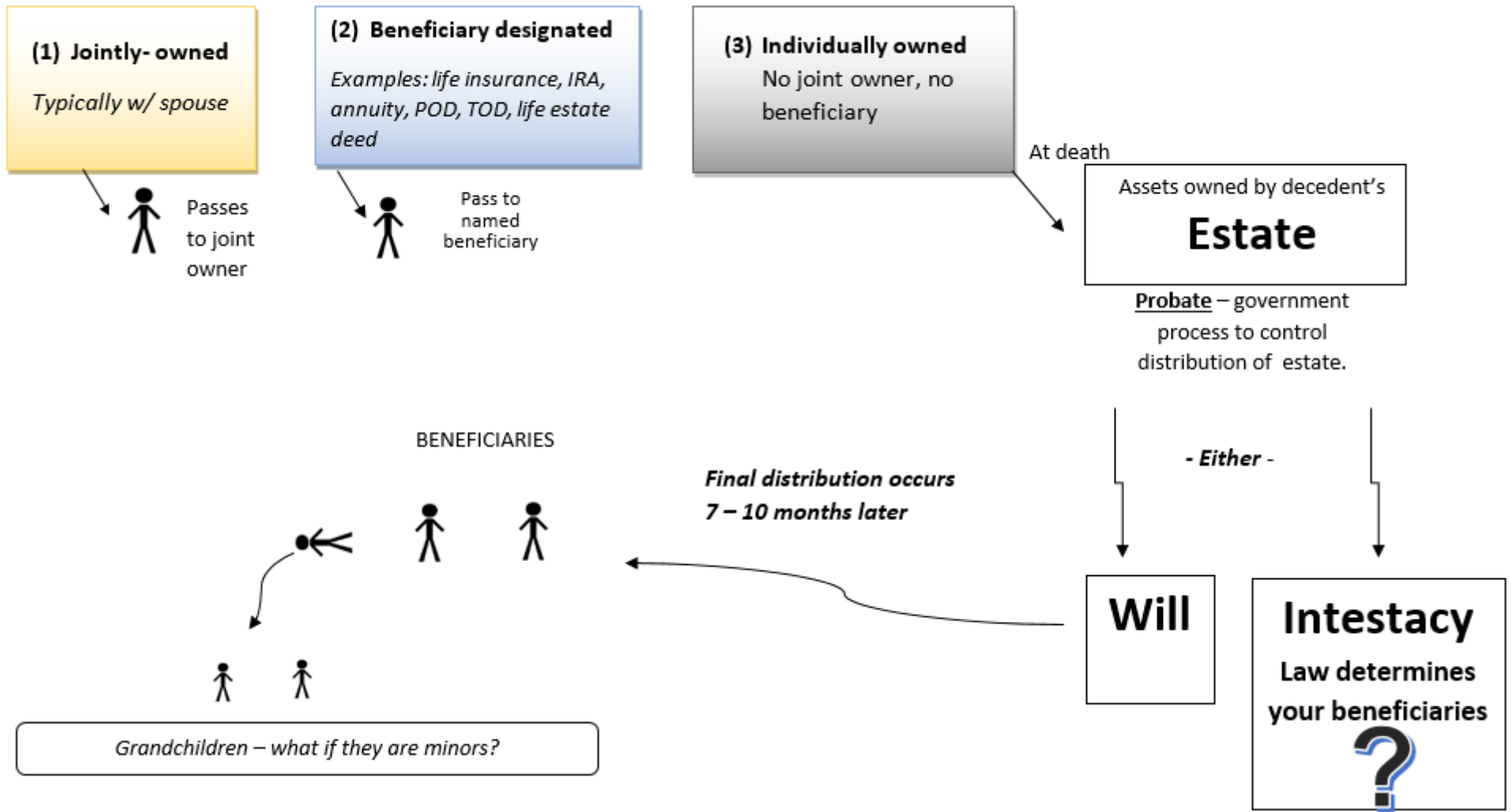
Retirement Goals for Estate Planning

1. Minimizing estate taxes imposed at death
2. Managing your assets and health care decisions if you lose mental capacity
- 3. At death, ensure that your assets will transfer easily, without hassles and cost**

How will your assets pass?

- Try this exercise: List all assets you own
- Typical list:
 - Home, car, retirement accounts, bank accounts, investments, personal belongings
 - Then ask yourself: *“what happens to each asset upon my death”*

How assets pass at death



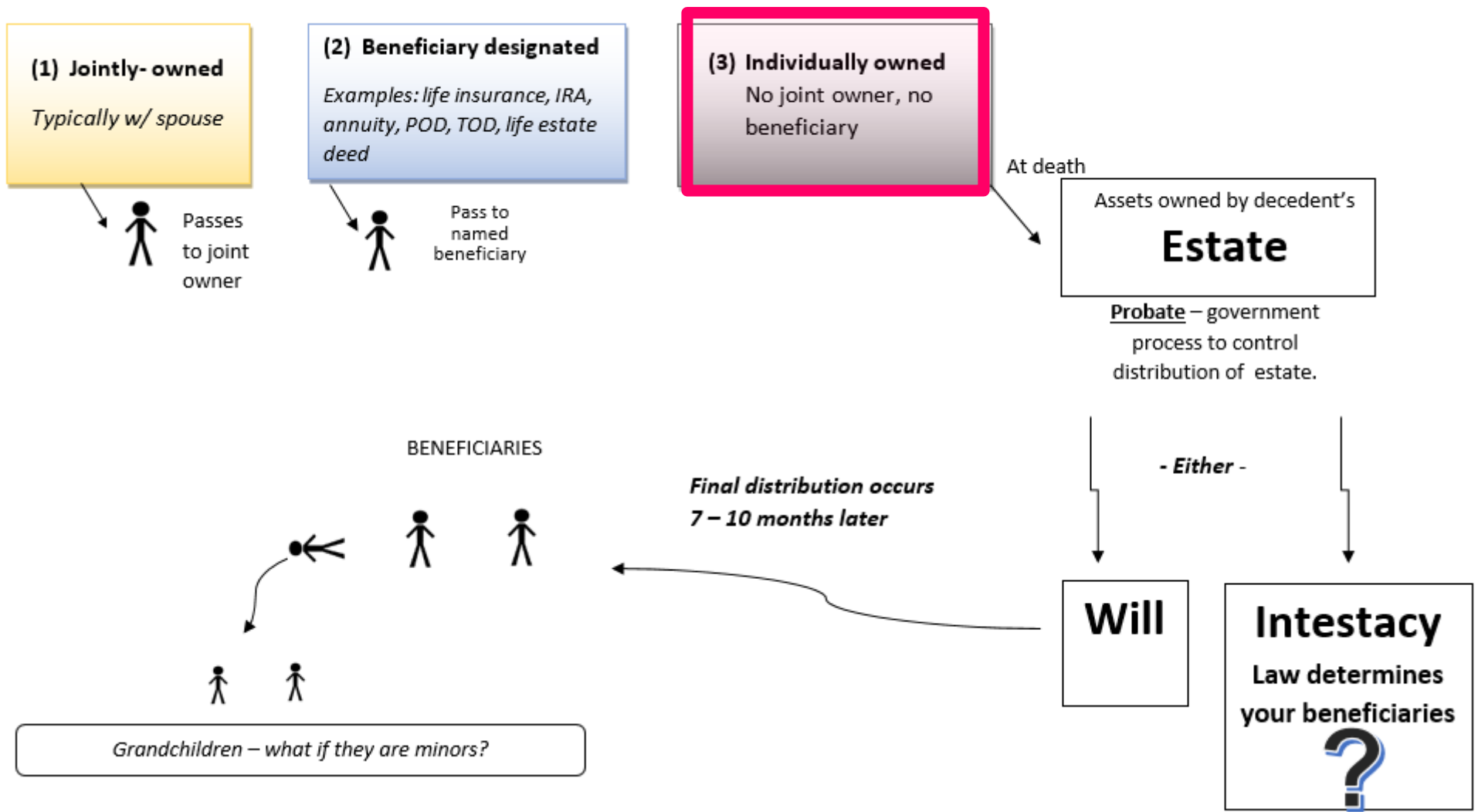
Starting the estate planning process

- Review your three critical documents
 - Last Will and Testament
 - Financial Power of Attorney
 - Advance Medical Directive
- Communicate with family – share your thoughts and ask for input
- Most hurt feelings occur with who you named to be “in charge”



A Will governs the probate assets – it does not cause you to avoid probate.

How assets pass at death



Probate ?

- **Probate** – the court supervised administration of a decedent's probate assets
- **Who supervises probate?** – Register of Wills office oversees probate *unless conflict erupts*
- **Conflicts** go before the Orphans' Court judge (i.e. the probate court)

The Trouble with the Probate Process

- Some families get frustrated with:
 - All the forms to be filed with Register of Wills
 - Adhering to deadlines – consequences if late
 - Estate not considered closed until court approves final accounting: 7 to 10 months
- ***Probate documents are public***



🔍 Maryland Estate Search



registers.maryland.gov › main › search ▾

Estate Search - Register of Wills - Maryland.gov

This website provides public access to the **estate** case **records** of the State of **Maryland** Register of Wills Offices. Access to these **records** is governed by ...





THE OFFICE OF THE REGISTER OF WILLS

[REGISTER OF WILLS MAIN SITE](#)

[ONLINE HELP](#)

ESTATE

CLAIM

[Estate Search FAQ](#) | [Estate Search Glossary](#)

Estate Search

Search Criteria Returned No Results.

Estate Number:

Last Name:

schaefer

Exact Match on Last Name

County:

First Name:

william

Middle:

Donald

Estate Status:

Filing Date (Format: MM/DD/YYYY)

Range (from-to):

OR

Exact Date:

Estate Type:

Party Type:

Decedent

Clear

Search



THE OFFICE OF THE REGISTER OF WILLS

ESTATE

CLAIM

Estate Record (Baltimore County)

Estate Number: **000000163509**

Status: **CLOSED**

Date Closed: **05/13/2013**

Decedent Name: **WILLIAM DONALD SCHAEFER**

Date of Death: **4/18/2011**

Will: **PROBATED**

Date of Probate: **05/13/2011**

Aliases:

Personal Reps: **LAINY LEBOW-SACHS [KENNEDY KRIEGER INSTITUTE, 707 NORTH BROADWAY, BALTIMORE, MD 21205]**
ZELIG ROBINSON, THOMAS & LIBOWITZ, P.A. [100 LIGHT STREET, SUITE 1100, BALTIMORE, MD 21202-1053]

Attorney: **CHARLES B JONES [25 SOUTH CHARLES STREET, SUITE 2015, BALTIMORE, MD 21201]**

Type: **RE**

Date Opened: **05/13/2011**

Reference:

Date of Filing: **05/13/2011**

Date of Will: **01/08/2009**

Docket History

Filed On	Docket#	Code	Description	Page(s)	Request Copy?
05/13/2011	1	1424	PURPORTED LAST WILL AND TESTAMENT DATED 01/08/2009	11	<input checked="" type="checkbox"/>
05/10/2013	103		INVENTORY 2ND SUPPLEMENTAL	3	<input type="checkbox"/>
05/13/2013	104		FOURTH FINAL ACCOUNT DATED 04/30/2013	5	<input type="checkbox"/>
05/13/2013	105		ORDER OF COURT APPROVING FINAL ACCOUNT (DATED 04/30/2013)	2	<input type="checkbox"/>

Total Pages Requested: 11
 (\$0.50 per page) x \$0.50
 Total Page Charge: **\$5.50**
Total Fees: \$5.50

LAST WILL AND TESTAMENT
OF
WILLIAM DONALD SCHAEFER

I, WILLIAM DONALD SCHAEFER, of Anne Arundel County, State of Maryland, make, publish and declare this as my Last Will and Testament, hereby revoking all other Last Wills and Testaments and Codicils previously made by me.

The real costs of probate

- If lawyer hired -
 - You'll hear that attorneys charge a percentage (3.6%)
 - The legal fee is negotiable – “by the hour” is often less
 - Ask if law firm uses a paralegal and that will reduce cost
 - Value to using attorney: address tax issues, mediate among family members, handle legal issues, filings with Register of Wills
 - Family can still handle things – dealing with house and belongings

What can be good about probate?

- **Probate follows the instructions you leave in your Will.**
- Give your executor the authority to deal with:
 - Real estate – rather than several children taking title and then disagreeing on what happens to the property, paying upkeep.
 - Give your executor in the will the power to decide if will sell, pay fix up costs, chooses the realtor, does not need beneficiary consent as to terms of sale.

Is it worth protecting the inheritance for your heirs?

THE FIVE D'S OF WHAT CAN GO WRONG FOR AN HEIR

- Debts, lawsuits, bankruptcy could consume inherited assets
- Divorce – potentially half grabbed by the spouse
- Death of beneficiary – the inherited assets could pass to a son-in-law or daughter-in-law - not your grandchildren
- Disability – protect the inheritance from the cost of a nursing home
- Death taxes (change to the exemption amount likely in 2025)

Using a trust to protect children

(1) Jointly- owned



Passes to joint owner

(2) Beneficiary designated

Examples: life insurance, IRA, annuity, POD, TOD

Life Estate Deed



Designate individuals or the "trust"

(3) Individually owned

At death

Assets belong to the **Estate**

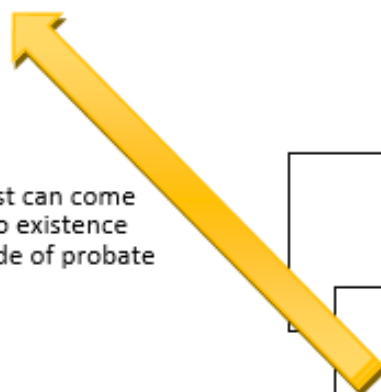
Probate – government process to distribute estate based on terms of Will.



Will

The Will contains provisions for establishing a Trust "Testamentary Trust"

Trust can come into existence outside of probate



Shortcut

Trust
Terms of trust are spelled out in the Will
Splits into shares

Children are trust Beneficiaries

Trust share



Trust share



Terms of trust – Initial trustee handles setting up the separate trusts. Trust divides into separate shares – one for each child. Children serve as own trustee. Trustees may pay out to themselves or to their own children. At child's death, child designates who the beneficiaries shall be. If they fail to, then you decide now what happens. Often passes to grandchildren.

Decide how long trust continues for grandchildren

Using Beneficiary Designations

- Banks – use their P.O.D. form - *pay on death*
- Investments – use their T.O.D. form - *transfer on death*
- For Real Estate
 - Use a “Life Estate Deed” (attorney drafts and records at Courthouse)
 - You (and spouse) stay the “life owners” – when both die beneficiaries automatically own the property - no probate
- Revocable Trust – consult with attorney to learn if this type of trust would be beneficial to you (example – re-marriage)
- Your motor vehicles . . .

NEW – Can designate a beneficiary for Vehicles



mymva maryland

Then click on:

<https://mymva.maryland.gov> > TAP > IND

<https://mymva.maryland.gov/TAP/IND/>

Then click on:



Vehicle Services

[View All Online Vehicle Services](#)

Then click on:

Titling and Ownership

> [Begin a Title & Registration Application](#)

Start your vehicle titling

> [Request Duplicate Title](#)

Request a duplicate title

> [Designate Vehicle Beneficiary](#)

Add, edit or remove a v

You have a Will? Great!

Where is it?

- **A photocopy of a Will is not a valid will (need court order to use)**
- **Where do people put their Will?**
 - **Home (*most common*)**
 - **The Register of Wills – For \$5 they store it in their vault.**
 - **Wills do not get “registered” – only get probated after death**
 - **Bank – safe deposit box – need backup named on signature card and be sure they can access the key**

Cost of Estate Planning

- Attorneys vary in price
- What are you getting for that fee?
 - Comprehensive initial consultation to review and explain existing documents and choices
 - Preparation of Will(s), Power(s) of Attorney and Advance Directive(s) using best documents
 - Meeting to review, execute and implement plan
- Average range between \$1,000 to \$2,000

Advance Medical Directive

Choose your Health Care Agent

Under federal law, hospitals must ask upon admission for a copy of your Directive so they know the **who** are the Agents are and **what** authority the Agents have.

Problem: Most people do not have their Advance Directive with them upon hospital admission.

- Solution: You can now **upload a copy** of your Advance Directive so it is linked to all Maryland hospitals and hundreds of doctors
- Start by creating an account on MyDirectives.com
- Medical providers simply download your Directive from MyDirectives.com
- You may also indicate who to call in an emergency

MyDirectives.com

MyDirectives®

[Home](#)

[How It Works](#)

[Preview a Plan](#)

[About](#)

[Contact](#)

[Help](#)

[Returning User](#)

[New User](#)

Make your medical wishes known

MyDirectives — free, easy, always available.

Start Now. Select an option below:



Name a Healthcare Agent

⌚ 2 min.



Create a Digital Advance Care Plan

⌚ 20 min.



Upload an Existing Document

⌚ 3 min.

And it's FREE



LEARN MORE

SIGN IN


Create Your Account

My Contact Information

First Name


Username ⓘ

Mobile Phone ⓘ

 ▼ OPTIONAL

Sign up with Facebook




 Continue with Apple

Last Name

Email

Date of Birth

Month ▼ Day ▼ Year ▼ 

CANCEL

SUBMIT



Maryland MOLST Form –

- *State of Maryland form:*
 - “Medical Orders for Life Sustaining Treatment”
- You express your wishes for certain treatments
- Form is provided by your health care professional
- You both review and sign the MOLST to go in your medical chart
- Doctors must follow your MOLST – it’s an ORDER
- Will be updated continually as your condition changes

HEALTH CARE DECISION MAKING WORKSHEET

Patient's name	Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female
----------------	---------------	---

Part A _____ Initial this line	Most Important Goal(s) of Care: What does the patient or authorized decision maker hope to achieve?
--	---

Part B	<p>If the patient has a written advance directive check this box <input type="checkbox"/> and attach a copy.</p> <p>If the patient currently lacks the capacity to make health care decisions, check this box <input type="checkbox"/>.</p> <p>In case the patient lacks or loses capacity, the following individual will make decisions:</p> <p>_____</p> <p style="display: flex; justify-content: space-between;"> Name Phone Number </p> <p> <input type="checkbox"/> Health Care Agent <input type="checkbox"/> Guardian <input type="checkbox"/> Surrogate Decision Maker </p>
--------	--

Meanings and Implications	
1	<p>CPR Status: What should be done to try to prevent or manage an actual or impending cardiopulmonary arrest?</p> <p>_____ Attempt CPR, Comprehensive Cardiopulmonary Resuscitation Efforts</p> <ul style="list-style-type: none"> If cardiac and/or pulmonary arrest occurs, attempt cardiopulmonary resuscitation (CPR). CPR will include comprehensive medical efforts to try to restore and/or stabilize heart and lung function and prevent arrest, including any form of artificial ventilation.

Patient's Last Name, First, Middle Initial		Date of Birth	Page 2 of 2
		<input type="checkbox"/> Male <input type="checkbox"/> Female	
Orders in Sections 2-9 below do not apply to EMS providers and are for situations other than cardiopulmonary arrest. Only complete applicable items in Sections 2 through 8, and only select one choice per applicable Section.			
2	ARTIFICIAL VENTILATION		
	2a. _____	May use intubation and artificial ventilation indefinitely, if medically indicated.	
	2b. _____	May use intubation and artificial ventilation as a limited therapeutic trial. Time limit _____	
	2c. _____	May use only CPAP or BiPAP for artificial ventilation, as medically indicated. Time limit _____	
	2d. _____	Do not use any artificial ventilation (no intubation, CPAP or BiPAP).	
3	BLOOD TRANSFUSION		
	3a. _____	May give any blood product (whole blood, packed red blood cells, plasma or platelets) that is medically indicated.	
	3b. _____	Do not give any blood products.	
4	HOSPITAL TRANSFER		
	4a. _____	Transfer to hospital for any situation requiring hospital-level care.	
		4b. _____	Transfer to hospital for severe pain or severe symptoms that cannot be controlled otherwise.
		4c. _____	Do not transfer to hospital, but treat with options available outside the hospital.
5	MEDICAL WORKUP		
	5a. _____	May perform any medical tests indicated to diagnose and/or treat a medical condition.	
		5b. _____	Only perform limited medical tests necessary for symptomatic treatment or comfort.
		5c. _____	Do not perform any medical tests for diagnosis or treatment.
6	ANTIBIOTICS		
	6a. _____	May use antibiotics (oral, intravenous or intramuscular) as medically indicated.	
	6b. _____	May use oral antibiotics when medically indicated, but do not give intravenous or intramuscular antibiotics.	
		6c. _____	May use oral antibiotics only when indicated for symptom relief or comfort.
		6d. _____	Do not treat with antibiotics.
7	ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION		
	7a. _____	May give artificially administered fluids and nutrition, even indefinitely, if medically indicated.	
	7b. _____	May give artificially administered fluids and nutrition, if medically indicated, as a trial. Time limit _____	
		7c. _____	May give fluids for artificial hydration as a therapeutic trial, but do not give artificially administered nutrition. Time limit _____
		7d. _____	Do not provide artificially administered fluids or nutrition.
	DIALYSIS	8b. _____	May give dialysis for a limited period.

If you are unconscious and unable to complete your MOLST

- Be sure your ***Advance Directive*** authorizes your health care agent to complete the MOLST
- Does your health care agent know how to answer the 9 multi-part questions?
- Give written direction to your health care agent so they know your wishes
- No specific form exists for this

Guidance to my Health Care Agents
How to Complete My MOLST (Medical Orders for Life Sustaining Treatment)

Prepared by: _____

INTRODUCTION

This document is to advise you, my Health Care Agents, on how I would like you to make critical decisions regarding my health care if I am not able to make such decisions. Using the guidance I have provided in this document, you may complete a MOLST (Medical Orders for Life Sustaining Treatment) on my behalf to express my wishes to my medical providers. **This document is not a MOLST form and should not be given to, or followed by, my medical providers.**

GUIDANCE FOR WHEN TO REFUSE OR WITHDRAW MEDICAL TREATMENT: Below I have indicated my wishes for receiving medical treatment if I am unable to make such decisions. You should first consult with my medical care providers to learn the likelihood of my recovering from the existing medical condition and the likelihood of my ever living a comfortable and fulfilling life. You should consider **obtaining a second opinion and allowing sufficient time to fully evaluate any prognosis** that might lead to your decision to withdraw or withhold my medical treatment.

I HAVE PLACED CHECK MARK(S) NEXT TO MY CHOICE(S) ADVISING OF MY WISHES.

1. If I suffer from a severe and permanent cognitive disorder rendering me unable to: make sound decisions; recognize those who I love; or care for myself causing a complete loss of dignity, then:

- I do not wish to have any invasive procedures that would prolong my life.
 I do not wish to receive any MEDICAL INTERVENTION (defined below).
 I do not wish to be treated for any life-threatening illness and I wish to accept hospice care.
 You may withdraw or withhold nutrition and hydration including a PEG tube.
 You may issue "do not resuscitate," "do not intubate" and "do not hospitalize" orders.
 You may direct that I be discharged from a medical facility even if against medical advice.

All of the above **None of the above**

Have you addressed Costs of Long-Term Care?

Type of Care	How is this paid for?
Health aids coming to the home	Out-of-pocket – or – You have long term care insurance
Assisted Living	Out-of-pocket - or – You have long term care insurance
Rehabilitation in a facility – receive physical, occupational, speech therapies and other skilled care	Medicare pays first 20 days in full. Patient co-payment after 20 days (or supplemental insurance covers) 100-day maximum coverage (often less)
Nursing home	Out-of-pocket, long term care insurance or: Medicaid Assets must be below \$2,500

Elder Law Advice

Medicaid Eligibility – For Nursing Home Only

Single Person	Married Person
Assets must be below \$2,500	Healthy spouse allowed to keep: one home and up to \$148,000 (
Incorrect advice is often given: family told to “spend down” assets at nursing home to get to \$2,500	With proper planning, can save all monies over \$148,000.
Applicant may give assets to family and obtain Medicaid benefits. Save up to 50% even if gifted while in nursing home .	Even after spouse is in a nursing home all assets can be protected with 30 – 60 days. No issue with 5-year lookback
Protect house with new deed or by putting in a trust – after 5 years, fully protected	Change estate planning to not leave assets to spouse in nursing home.

Take aways from this webinar

- Verify you have your *original* will and others know where to find it
- Designate a vehicle beneficiary with MVA
- Upload your Advance Directive to *MyDirectives.com*
- Communicate your medical wishes to family, preferably in writing: your “MOLST guidance”
- Do a complete review with estate planner every 5-10 years

Contact Information

Kevin F. Bress
Bress Raut Law, LLC

Direct line: 410-339-6767

Kevin@BressRautLaw.com