DAVID S. WALKER, ATTORNEY AT LAW
DAVID SINCLAIR WALKER, JR. P.C.
P.O. BOX 871329, STONE MOUNTAIN GA 30087

DAVID SINCLAIR WALKER, JR., P.C.
ADMITTED IN GA AND D.C.
www.walker-law-firm.com/

TELEPHONE 770-972-3803
FACSIMILE 770-921-7418
david.walker.law.firm@gmail.com

North Gwinnett Office
6340 Sugarloaf Parkway Suite 200
Duluth GA 30097

South Gwinnett Office
2330 Scenic Highway
Snellville GA 30078

INFORMATION AND CHECKLIST FOR WILL and TRUST PREPARATION

Some General information:

A) Make a Will or Revocable trust

Just about everyone needs a will or revocable trust for estate planning. But if you have children, you'll definitely want a one of these, for at least four reasons:

First, if your children are young, you'll want to use your will to name a personal guardian to raise your children in the unlikely event something happens to you and the other parent.

Second, you probably don't want to leave money directly to young children -- which will happen if you pass on without a will. Without a will or trust, the surviving spouse only gets a part of your estate, and the children get part (And then a court would normally have to appoint and supervise an adult to manage it). With a will, you can leave everything to your spouse, or leave property directly to children but arrange for someone to manage it for them.

Third, children who inherit property when you have no will get their inheritance when they turn 18 in the state of Georgia. With a will, you can include a trust which allows you to delay this.

Fourth, people often want to leave their estate, or most of it, to their spouse. Without a will, the surviving spouse and children will all receive equal shares, except that the spouse will receive no less than one third. With a will or revocable trust you can vary these rules. Without a will, state law tells you who will inherit your property and in what percentage.

There are lots of other reasons to make estate plans, too ... for example, if you want to leave property to a partner, friend or charity.

B) Name Beneficiaries for Bank Accounts, Securities and IRAs

Some of your most valuable assets often won't pass under the terms of your will or trust. To control who inherits them, you need to name a beneficiary, through by whoever has custody of the assets now -- for example, a bank or broker. While you're alive, you're free to change the beneficiary.

C) Consider a Living (also known as Revocable) Trust

A basic living trust serves to avoid probate, the lengthy and expensive court-supervised process of distributing property after death. Probate is generally required for property left through a will.

If you own a lot of property (which can increase cost of probate expense), a living trust is a good idea, especially if you are older or in poor health.

D) Name Someone to Make Medical Decisions for You, in Case Someday You Can't

Use a healthcare power of attorney, or advance directive to spell out your wishes about end-of-life medical treatment, in case someday you cannot communicate your choices. Don't wait until you are elderly or in poor health; accidents can happen to anyone, and it's young, healthy people who are most likely to live for many years after a serious accident.

The instructions you set out in your directive are, in most circumstances, binding on your doctors. In Georgia and some other states, you can use your directive to name someone to make sure your wishes are carried out. That is a healthcare power of attorney, also called an advance directive.

E) Arrange for Someone to Handle Your Finances, If Necessary

It's wise to prepare and sign a "durable power of attorney" for finances, which gives a trusted person power over your financial affairs (bills, taxes, collecting Social Security and so on) if you become unable to manage them.

If someday you need this kind of help but haven't given someone this authority, a court will have to appoint and supervise someone -- a costly, public process.

F) Plan for Children with Special Needs

Most parents with special needs kids ... 68 percent, according to a survey... haven't even written a will, even though more and more children with disabilities are outliving their parents.

And 88 percent of parents haven't set up a trust for their children to make sure that they will remain eligible for Medicaid and Supplemental Social Security payments after inheriting property.

Setting up a special needs trust, in conjunction with a will or living trust, is a straightforward, reliable way to make sure children won't lose important benefits - especially Medicaid - because of an inheritance that exceeds income and asset limits.

G) Tell Your Executor Where Everything Is

All your carefully crafted estate planning documents and valuable insurance policies won't mean a thing if no one can find them after your death.

Make things easier on your executor - the person you appoint in your will to wrap things up after your death - by organizing and labeling important papers.

H) Make a list of practical things

If you are unable to manage your affairs (or after your death), it is helpful to your executors, or power of attorney holders, to know things that need to be done regularly in your household.

- Utilities, credit cards, other recurring bills
- List of insurance policies, IRAs, annuities, bank accounts
- Mortgage holder contact information, loan numbers, addresses
- Prescription medication you may take

- Location of important papers- wills, powers of attorney, medical advance directive, deeds, mortgages, other loan agreements, other assets
- Location of water shutoff valves, breaker boxes and the like around your home
- Your wishes as to disposition of your personal effects
- Location of safety deposit boxes, safes, fireproof storage boxes, etc.
- List of creditors, addresses, and balances
- Other things may come to mind about your specific situation that would be helpful for someone to know that has to manage your affairs or manage your estate

CHECKLIST FOR WILL and TRUST PREPARATION

1. Full name. Please fill out information sheet on last page of this checklist and return with the checklist.

2. What County do you reside in?

3. Spouse's full name. Married persons: each should fill out their own checklist, as each will have his or her own separate will document.

4. Names and ages of your children.

5. Do you want to be buried or cremated?

6. Do you want to leave your entire estate to your spouse, if you are married?

7. If your spouse does not survive you, do you want to leave your estate equally to your children?

8. What if one or more of your children do not survive you? Do you want to include any grandchildren, or leave to surviving children, or some other choice?

9. If you have other desires for leaving your property, please write them in detail.

10. Do you want to make any special bequests? (Which means a gift of a specific piece of property or sum of money to a specific person or organization.)

11. Do you want to leave the balances in joint bank accounts to the co-depositor instead of having that go to your estate?

12. With a will, who do you wish to be the Executor (or Personal Representative) of your will? (If you have a revocable trust you still need a backup will, or "pour-over" will). This is the person that offers the will for probate and handles the distribution of the estate. It is different from the Trustee, in that the Trustee handles money over a long period of time so long as the children are minors or

the Trust is still otherwise in effect. Many people pick the surviving spouse, although this is not required.

13. It is also common to pick an Alternate Executor. If the named executor cannot serve, who would you want to serve as alternate?

14. Do you want to have minors' trust provisions, in case your children or grandchildren are not of adult age and both parents are deceased? This can be in a will or revocable trust. Without such provisions a court guardianship may be needed.

15. In these trust provisions, would there be a separate share for each child or grandchild, or would the assets be in a common fund for all of the children?

16. At what age would the children or grandchildren receive their shares? (This can be done in parts at different ages, for instance ½ at age twenty-one (21) and ½ at age twenty-five (25), or at a stated age such as 21).

17. Who would be the trustee for minor children or grandchildren, that is, who would manage the money? The surviving spouse should not be named as Trustee because these offices would only come into existence in case both parents are deceased or if the children are still under age or still under the age set for the trust operation.

18. If that trustee cannot serve, who would be the alternate?

19. If you have a revocable trust, the person creating the trust is usually the initial trustee. With a married couple, both are often trustees. But, you need to name an alternate trustee to handle matters after the person or persons creating the trust are deceased.

20. Who would you prefer to be the guardian, that is, have custody of your minor children, if both of their parents are deceased (if you have no minor children you do not need to name a guardian)? Normally a surviving parent will take custody of minor children unless they are unable or have issues that would render unfit. So, you are naming someone to serve as guardian if both parents are deceased or not available to take custody, and there are minor children.

21. If the named guardian cannot serve, who would you want to serve as alternate?

22. Please state any statements you wish to make in the will. For example: if you are giving an extra share to a person or leaving a person out who might expect a gift; or, if you wish to comment about a special relationship, etc.).

23. Do you want to provide that any beneficiary who contests the will in any legal proceeding will forfeit his or her share?

24. If you have an IRA, and are not leaving it to a spouse, there can be substantial tax consequences. Please advise if this is the case and we can include an IRA trust that will help reduce these taxes.

25. Fees: wills only, no additional documents

    a. Basic (no estate tax planning needed) will for single person:$875.00

    b. Basic wills for married couples:$975.00

    c. Codicils $475 single person, married couple $575

    d. Complex or highly detailed wills may incur additional fee, and additional meetings may be billed as additional fee, one meeting is customary.

26. Additional documents for disability or healthcare may be desired. Wills do not deal with disability issues, managing money when one is disabled, healthcare decisions, or life support issues. Wills only take effect at death.

    Additional documents –

- Advance Directive For Health Care-This is a written authorization to physician in to withdraw life support, and appointment of agent for authorization to physician to withdraw life support, and make other healthcare decisions when you are unable to. *This Advance Directive for Health Care replaces the formerly used documents, the Living Will and Healthcare Power of Attorney.*
- Durable Power of Attorney – in Georgia format and also in format recognized in all states-for disability and financial matters planning
- Georgia Financial Power of Attorney - disability and financial matters planning.

- Above documents, other than wills, separately, $300 per document

Full will package:

Above documents included in Full Will Package- will and all documents listed above- $975.00 single, $1075.00 couple.

27. Life Insurance, IRA's, 401k's and Annuities

Be sure that you know whom the beneficiaries are that you have named in your policy, IRA, or annuity. The funds will go directly to those beneficiaries. If you want those funds to go through your will, the beneficiary must be your estate. Otherwise, if you name individual beneficiaries they will receive the funds.

28. Estate Taxes:

i. If your net worth is over $11,000,000.00 including life insurance policies on your life that you own, or if you have made substantial taxable gifts, a simple will may not suit your needs, as it would not avoid estate taxes. You may need a bypass trust in your will to take advantage of the unified estate tax credit. You can reduce your taxable estate by making gifts. More information will be needed, and our basic will fees do not apply. These amounts are subject to change by Congress at any time, however. Updated Legal advice should always be obtained on this subject. This figure will increase as it is adjusted for inflation.

ii. Georgia estate tax does not apply to any estate with a date of death that occurred in a year for which the Internal Revenue Code does not allow a credit for state death taxes.

29. Revocable Living Trusts:

a. A revocable living trust is an alternative estate-planning tool to a will. It is a legal entity that must own your property in order for it to work. (It is still your property, because you basically "own" the trust as grantor). At the time of death, it is simpler procedurally to have such a trust. However, it is more complicated to create one, because all of your property must be transferred to the trust name ("titled" to the trust). It has no estate tax advantages in and of itself. However, the same estate planning techniques can be used in a revocable trust as in a will (see paragraph 20). Revocable trusts are also more private, as they are not filed for probate

like a will. Generally, older persons who do not plan to buy and sell houses and cars frequently, or change banks frequently, are the best candidates for revocable trusts, in my opinion. However, anyone can use such a trust for estate planning in place of a will. Basic will fees do not apply. A person can also do disability planning through a revocable trust.

b. <u>This checklist should still be filled out if you desire a revocable living trust.</u>

30. *If you desire only a basic will and no other documents, it is not necessary to complete any further answers to questions below, which pertain to health care planning, termination of life support, and disability planning for financial matters if you are unable to manage your affairs. However you will find it informative about the contents and purpose of these document.*

31. *Please fill out the last page, new client information.*

32. Regarding the preparation of a Financial Power of Attorney (in case of your inability to manage financial affairs, to avoid or delay need for expensive guardianship), you will need to name someone that in the event you become unable to manage your financial affairs would do so for you. The name of this person is called your Financial Agent. This often is the surviving spouse. Again, You may want to name an alternate if your first choice is unable to serve. Please identify:

    a. Financial agent
    b. Alternate agent

33. Regarding the preparation of an Health Care Advance Directive (for medical and life support decisions) you will need to name an agent that is someone to make health care decisions for you including power to require, consent or withdraw any type of personal care or medical treatment. It is also wise to name an alternate agent if your first choice of agent is unable to serve. Please identify your agent and alternate, and provide this information that would be necessary if your agent needs to be contacted to act for you.

Agent:	Alternate Agent:
Address:	Address:
Telephone:	Telephone:

TERMINAL CONDITIONS-LIFE SUPPORT

At the time of your appointment, you will be asked to make choices regarding the determination of circumstances for prolonging life. During your appointment, he will be glad to answer any questions that you may have regarding these choices.

In this regard you will be asked to consider these choices, if you are in a terminal condition, on life support, but still conscious, or if you are in an irreversible coma (one or the other or both).

This is an important matter, because a person can be on life support and still be conscious, with a terminal illness, not expected to recover.

It is a serious matter to address termination of life support for a person who is terminally ill, but still conscious. This can happen when there is a stroke or spinal injury, for example.

Or, you may choose to address life support issues to apply only to the situation where you are in a coma, not expected to ever regain consciousness.

So, during your appointment, you will be asked to indicate whether your life support termination instructions apply to a

-if you are in an irreversible coma and on life support, or

-if you are in a terminal condition, on life support, but still conscious, or both,

IT IS RECOMMENDED THAT YOU ADDRESS BOTH and please indicate your choices below as to termination of life support.

Terminal conditions

(6) Conditions –Coma- Terminal and Unconscious

____(Initials) I wish to state my treatment preferences if I am in an irreversible coma and on or needing life support.

____(Initials) Coma definition–A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment. My condition will

be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

Treatment Preferences (Coma) - State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.]

If I am in any condition that I initialed above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) ____(Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

(B) _____ (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication.

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows: [Initial each statement that you want to apply to option (C).]

_____(Initials) I want such medications, machines, or other medical procedures as my healthcare agent may decide I should have.

_____ (Initials) Nutrition: If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means.

_____ (Initials) Fluids: If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) Breathing assistance: If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) Cardio: If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

(7) Terminal but Conscious (Not in Coma)

____(Initials) I wish to state my treatment preferences if I have a terminal condition, on or needing life support, but still conscious and aware but unable to communicate.

____(Initials) I understand that Terminal condition that I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

I desire that in this situation:

____(Initials) that my choices made in paragraph 6 above as to my choices if in a coma should apply if I am terminal but conscious.

____(Initials) I desire that in this situation that my healthcare agent should make life support decisions, taking into account my choices made in paragraph 6 above, but these choices are not binding on my agent.

____(Initials) Other_____

INSTRUCTIONS TO ACCOMPANY WILL

CHANGES IN THE WILL: DO NOT MAKE ANY CHANGES IN THE WILL. Writing on the will by making additions, deletions, or substitutions may revoke the will. If you desire to change your will, it is necessary to make a codicil or execute a new will. You should consult an attorney if you wish to make changes to a will. Any amendment has to be executed and witnessed as fully as the original will.

SAFEKEEPING: The original will should be kept in a safe place where it is not likely to be lost or destroyed, and where it will be available when needed. A safe-deposit box may be used to store a will; however, if another person does not have access to the box, it may take some time to gain access to the document. Your will may also be kept where you keep other valuable papers such as a fireproof file cabinet. Probate Courts also offer safe-keeping of wills. This service gives you and your attorney access to the will on demand during your lifetime and access to your named executor upon proof of your death. The document is not made public until it is probated after your death. If you do file your will with the court you have to be careful if you ever amend it to file the codicil as well. Wherever you store your will, be sure your executor and an alternate know the location of your will.

COPIES: Do not sign blank copies of your will. Copies of the will, if signed, may lead to confusion as to which is the "will" and which is a "copy". A photocopy of the signed will is acceptable for probate but the loss of the original must be proved. So, it is always important to retain the original. If you wish to have a copy of a will available, you may give a copy of the will to your EXECUTOR or your ALTERNATE EXECUTOR so that these persons will know that there is a will.

PROBATE: Probate is the proceeding by which a will is proven to be the genuine will of a deceased person. Proof may be offered by written interrogatories (questions) to one or more witnesses to the will, by the testimony of the subscribing witnesses before the Probate Judge, or by a self-proving affidavit. All wills that we prepare now include a self-proving affidavit. A will should not be witnessed by an heir or by a beneficiary under the will. It is very important that your executor be able to locate at least one of the witnesses to the will; therefore, you should have your will witnessed by someone you believe can be easily located after your death. It is not advisable to use total strangers as witnesses if you do not believe that your executor could locate these persons after many years. If you know that someone who has witnessed your

will has moved, married, or died since the execution of the will, you should make that information available to your executor. If you have a self-proving affidavit attached to the will, your executor may be able to probate the will even if the witnesses are dead or cannot be located. So, it is always good to have a self-proving affidavit. If your will is an older will without a self-proving affidavit, you can add one with a codicil.

REVOCATION: Wills may be revoked by different means including writing of a new one or the physical destruction of an old one. Be especially cautious of destroying a will that has copies (either signed or unsigned). The presumption is that if an executor cannot provide the original, the will was intentionally revoked; however, a copy (signed or unsigned) may be offered for probate if your executor can overcome the presumption by giving testimony that it was simply lost or accidentally destroyed. The best way to revoke a will is to execute a new will and collect any copies of the old will and destroy them.

REVIEW: Your will should be reviewed periodically to be sure that it accurately expresses your desires and to be certain that those named as executor, guardian or trustee are available and in good health. Please note that significant personal changes such as marriage, divorce or the birth of a child may affect the validity of a will or the disposition of property under the will if the particular life-event is not contemplated in the will. If you are not sure what effect an event has on your will, consult an attorney.

INSURANCE: Most wills do not dispose of the proceeds of life insurance policies. The disposition of a life insurance policy is to the named beneficiary. If your estate is the named beneficiary, or if there is no named beneficiary, the proceeds may be disposed of by will. Be especially cautious of leaving an insurance policy to a minor child. If you should die before the child reaches 18 years of age, a formal legal guardianship may be required unless a trust is created to handle the proceeds. Consult with your agent or an attorney for more information on this situation.

GUARDIANSHIPS: It is very important to name a Testamentary Guardian of Person if or your minor child in case your child does not have a surviving parent upon your death. The need for a Guardian of Person may arise if the child's other parent predeceases you or in the event both you and the child's other parent die in a common accident. If the child has a surviving natural parent, then that parent is automatically the Guardian of Person. Naming a Guardian of Person other than the child's other natural parent will have no effect if the other parent survives. If there is no natural parent surviving, the Court may have to choose a guardian for your child unless you name one in your will. If you leave property directly to a minor child, you

should either name a Testamentary Guardian of Property (or Conservator) or set up a trust for the benefit of the child. This should be done even if the child has a surviving parent. You may name anyone (including someone other than the child's surviving parent) to be the Testamentary Guardian of Property or Trustee. By setting up a trust, you will save the establishment of a formal, court-supervised guardianship and the cost of a bond. If you have a minor child or leave property to an adult who is physically or mentally incapacitated such that he or she cannot manage an inheritance, you should consult your attorney.

TAXES: If you should have concerns that your estate may owe estate taxes, you should discuss your concerns with a tax advisor.

NEW CLIENT INFORMATION

TODAY'S DATE_____

NAME:_____

OTHER NAME(S) YOU ARE KNOWN BY:_____

HOME ADDRESS:_____

WORK ADDRESS:_____

HOME PHONE NO.:_____WORK PHONE NO.:_____

MOBILE NO.:_____FAX NO.:_____

CALL BEFORE FAXING? YES NO

CELL PHONE:_____EMAIL:_____

REASON FOR VISIT:_____

SPOUSE'S NAME:_____

HOME PHONE NO.:_____WORK PHONE NO.:_____

PAGER NO.:_____FAX NO.:_____

CELL PHONE:_____EMAIL:_____

REFERRED BY:_____

NOTES_____

_____

_____