Legal Guide Topic List

Welcome to the Legal Guide portion of the It's Legal Help System. The Guide will give you expert information on the following topics:

For more information, see:

- Bankruptcy
- Consumer
- Corporate
- Credit
- Divorce
- Employment
- Estate/ Personal
- Financial
- Health and Medical
- Powers of Attorney
- Real Estate
- Seeking Legal Counsel
- Trademarks/ Copyrights
- Exhibit
- Use of It's Legal for Others


About the
Legal Guide

Seeking Legal Counsel

We suggest, in many places throughout the Legal Guide, that if you have a question concerning the construction of your documents, you should seek legal counsel. The information below will help you determine is a guide to determining what type of lawyer you may need and how to find a reliable professional in your area.

AREAS OF LAW SPECIALIZATION

1. Wills, Powers of Attorney - the Area of Law Specialization is Probate, Wills, Trusts, and Estate Planning

2. Premarital Agreements - the Area of Law Specialization is Family Law.

3. Employment Documents, Employment Letters, and Consulting Agreements - the Area of Law Specialization is Employment Law.

4. Real Estate Leases and Home purchase, evaluation and sale worksheets - the Area of Law Specialization is Real Estate Law.

5. Promissory Notes, Equipment Leases, Minutes, Bills of Sale, Business Entity Planning worksheets, and License Agreements - the Area of Law Specialization is Corporate and Business Law.

6. Consumer Complaint and Credit Letters - the Area of Law Specialization is Debtor/Credit Law.

Before you choose a lawyer based on his or her specialization, keep in mind that, depending on the size of the firm, areas of specialization may vary. In smaller firms, most lawyers are "general" and can respond to the questions raised in the above areas, whereas in larger firms, the lawyers tend to be more specialized in their areas of practice. Of course, if you have any questions, you can discuss these with a lawyer or your state, provincial, or local bar association.

LOCATING A REPUTABLE LAWYER

Many legal matters are sensitive in nature, and you will want to ensure your questions are answered accurately and that your rights are protected. Consequently, you will want to seek legal counsel from a knowledgeable and reputable lawyer. To find a reputable lawyer, you can contact any of the following sources (in no particular order):

FRIENDS AND BUSINESS CONTACTS - Check with people who may have seen a lawyer regarding a legal issue in the same area of specialization as your problem.

LEGAL SERVICES AGENCIES - These agencies consist of lawyers who provide legal services primarily for persons who meet certain income guidelines. However, many of these lawyers will answer a few questions or provide recommendation for anyone who contacts them. Many legal services lawyers have good backgrounds and can answer questions on employment matters, real estate leases, and debtor/creditor issues. You can obtain more information by directly contacting the nearest legal services agency.

STATE, PROVINCIAL, AND LOCAL BAR ASSOCIATIONS - These associations of lawyers sometimes provide legal information and may offer referral services. To contact your local bar association, look in

the yellow pages of your telephone directory (under "Associations" or "Bar," depending on your directory).

OTHER PROFESSIONALS - Often other types of professionals, such as bankers, life insurance agents, and realtors, can provide referrals. For example, loan officers are frequently aware of general business lawyers who can help with questions on real estate, employment, general, and corporate law. In addition, bank trust officers are often familiar with wills and estate planning. Finally, accountants are often knowledgeable regarding business lawyers in the area.

MARTINDALE-HUBBELL LAW DIRECTORY - This reference book lists all lawyers in the United States or Canada. The directory is a multi-volume resource, often available in larger public libraries. Such libraries may also include similar services which include listings of lawyers.

For more information, see:
LEGAL GUIDE TOPIC LIST

Consumer Letters

There are two basic steps in making a consumer complaint. First, contact the person or company who sold the item or performed the service. Explain the problem and what action you would like to see taken. If you are unsuccessful, ask to speak with the supervisor or manager. Often, a complaint is resolved at this level.

If you fail to receive a response at the local store, call or write to the person responsible for consumer complaints at company headquarters. The Consumer Complaint letter in the program can help you write a letter. Address letters to the company president or consumer office. Many companies have toll-free telephone numbers, often printed on the product's package. To find out if a company has a toll-free number, call 1-800-555-1212.

You may also want to write a letter to your local consumer protection office. Consult your telephone directory for county or city consumer protection offices. If no consumer protection office is listed for your state, refer to the Attorney General subtopic. You may want to write to the Better Business Bureau or Attorney General with It's Legal letters.

When preparing to file a complaint, it is important to maintain records. Make copies of correspondence and keep a written record of the people with whom you speak and what action was taken. Do NOT send your original documents to the company.

For more information, see:
COMPANY CONTACTS & BRAND NAME INFO
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
COMPLAINT TO BETTER BUSINESS BUREAUS
DISTINCTION BETWEEN BBB AND STATE GOVT OFFICES
FILING A CONSUMER COMPLAINT

Company Contacts and Brand Name Information

If contact with the sales person or company representative does not resolve the problem, the next step is to send a letter to company headquarters. A listing of several major corporate contacts is available in Parsons Technology's Personal Advocate program.

Additional sources for company and brand name information can be obtained from the product label or warranty information or from the "Consumer's Resource Handbook" prepared by the Office of the Special Advisor to the President for Consumer Affairs. A free copy of the handbook may be obtained by writing: Handbook, Consumer Information Center, Pueblo, Colorado 81009.

You also can obtain information from the following books in your local library:

* Standard & Poor's Register of Corporations, Directors, and Executives.
* Standard Directory of Advertisers.
* Thomas Register of American Manufacturers.
* Trade Names Directory.

For more information, see:
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
COMPLAINT TO BETTER BUSINESS BUREAUS
CONSUMER LETTERS
DISTINCTION BETWEEN BBB AND STATE GOVT OFFICES
FILING A CONSUMER COMPLAINT

Complaint to Better Business Bureaus

There are currently about 180 Better Business Bureaus (BBB's) in the United States. These BBB's are nonprofit organizations sponsored by private local businesses. They offer a variety of information on products or services, reliability reports, background information on local businesses and organizations, and records of a company's complaint-handling performance.

Each BBB has its own policies regarding whether or not it will disclose the nature of a complaint against a business. However, all BBB's will disclose whether a complaint has been registered against the business in which you are interested.

Many of the BBB's will accept written complaints and will contact a firm on your behalf. However, BBB's do not judge or rate individual products or brands, handle complaints concerning the prices of goods or services, or give legal advice. If there is a situation involving potential liability (that is, an injury), the BBB will refer the complaint to the appropriate state government consumer office. However, many BBB's do offer binding arbitration upon request.

Additional information regarding Better Business Bureaus may be obtained from the Council of Better Business Bureaus, Inc., 4200 Wilson Blvd., Arlington, VA 22203, 703-276-0100, or from the "Consumer's Resource Handbook," published by the Office of the Special Advisor to the President for Consumer Affairs and available free by writing: Handbook, Consumer Information Center, Pueblo, CO 81009.

For more information, see:
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
CONSUMER LETTERS
DISTINCTION BETWEEN BBB AND STATE GOVT OFFICES
FILING A CONSUMER COMPLAINT

Distinction Between BBB and State Government Offices

The question of whether to write to the Better Business Bureau or the Attorney General's office depends on the questions involved and the nature of the complaint. If you have been injured by a product, have contacted an attorney, or are interested in the legal ramifications of your rights, the Attorney General's office is a more appropriate choice.

If, however, you are interested in getting background information on the business's track record of handling complaints and want help contacting the business's company representative, the Better Business Bureau is better suited to handle such a complaint. Explaining the nature of your complaint to the Better Business Bureau or the Attorney General's office will result in either one referring you to the proper agency. Another option is to first write a letter to the Better Business Bureau. If that avenue is ineffective, then write a letter to the Attorney General. Include copies of all correspondence with the company and the Better Business Bureau.

For more information, see:
COMPANY CONTACTS & BRAND NAME INFO
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
COMPLAINT TO BETTER BUSINESS BUREAUS
CONSUMER LETTERS
FILING A CONSUMER COMPLAINT

Complaint to Attorney General's Office

State government consumer offices can be helpful because they are easy to contact and are familiar with the state's businesses and laws. State consumer offices are set up differently across the nation. Some states have separate departments of consumer affairs, while others have a consumer affairs office as part of the governor's office or attorney general's office. Contact your governor's office to help you locate the proper office or to refer you to the proper agency.

Another good source for the addresses and telephone numbers of state consumer offices is the "Consumer's Resource Handbook" published by the Office of the Special Advisor to the President for Consumer Affairs and available free by writing: Handbook, Consumer Information Center, Pueblo, CO 81009.

If your consumer problem relates to a business outside of the state in which you live, you should contact the consumer office in the state where you made the purchase. When you contact any state consumer office, you will need copies of the sales receipts and other sales documents and all correspondence you have had with the company.

For more information, see:
COMPANY CONTACTS AND BRAND NAME INFO
COMPLAINT TO BETTER BUSINESS BUREAUS
CONSUMER LETTERS
DISTINCTION BETWEEN BBB AND STATE GOVT OFFICES
FILING A CONSUMER COMPLAINT

Filing a Consumer Complaint

When you make a consumer complaint, whether by telephone call or letter, it is important to provide specific information regarding the product or service in question.

The description of the product should include the serial or model number, the size, color, and any other distinguishing characteristics. Provide an accurate description of the service you received, the name of the person who performed the service, and when you received the service.

When describing the problem, be specific and to the point. Merely stating that the product "did not work" does not give enough information. A detailed summary of your complaint will aid the company in resolving your problem.

If a product was misrepresented or defective, the seller or manufacturer has a legal obligation to refund the consumer's money. If the product was defective, the obligation to refund the money may be subject to an opportunity to replace or repair the defective product. Some businesses, however, follow a cash refund policy regardless of the reason for returning the merchandise. Other businesses may have a return policy that all sales are final, or may only offer credit for returned merchandise. Therefore, it is advisable to find out the store's return policy before making the purchase.

Do NOT send your original documents to the company. Send COPIES of all the items that directly relate to your complaint. Retain the originals and extra copies for your records. Allow the company sufficient time to resolve your problem before seeking additional assistance.

For more information, see:
COMPANY CONTACTS AND BRAND NAME INFO
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
COMPLAINT TO BETTER BUSINESS BUREAUS
CONSUMER LETTERS
DISTINCTION BETWEEN BBB AND STATE GOVT OFFICES

Credit Letters

It's Legal provides a number of letters designed to help you safeguard your rights as a consumer with respect to the extension of credit, credit card billing, and reporting of credit status.

For more information, see:
BAD CHECK NOTICE
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
COPIES FOR CREDIT LETTERS
DEMAND FOR MONEY OWED
CREDIT CARD INQUIRY
RECOURSE AGAINST COLLECTION
REQUEST FOR A CREDIT REPORT

Bad Check Notice

A check is a promise to pay. The debt or obligation for which the check is issued is not discharged until the check is paid. When the check is not honored on presentation, the original debt for which the check was given is not discharged.

The person to whom money is owed (the "Payee") may recover for such debt without relying upon the check. The purpose of this letter is to advise the party signing the check (the "Drawer") of the failure of payment, and advises that payment is expected. The letter must reasonably identify the particular item which has been dishonored by identifying the financial institution upon which the check was drawn, to whom it was made payable, and the number, date, and amount of the check.

For more information, see:
CREDIT LETTERS
PAYMENT ARRANGEMENTS
RETURNED ITEM INFORMATION

Returned Item Information

The Bad Check Notice must reasonably identify the particular check or other item which was dishonored. Identifying information includes:

* the financial institution upon which the check was drawn.
* the number of the check.
* to whom it was made payable.
* the date of the check.
* the amount of the check.

For more information, see:
BAD CHECK NOTICE
CREDIT LETTERS
PAYMENT ARRANGEMENTS

Payment Arrangements

A check is only a conditional payment or a promise to pay. If a check has been returned unpaid, the payee may request an alternate form of payment by which the payee is assured of receiving payment. Such payment takes the form of cash, a cashier's check drawn on the bank itself, money order, or other form of "guaranteed" payment.

For more information, see:
BAD CHECK NOTICE
CREDIT LETTERS
RETURNED ITEM INFORMATION

Challenge to a Credit Report

The purpose of this letter is to challenge an unfavorable entry in your credit report.

When you receive your credit report, you should review it carefully for any mistakes or information more than seven years old (ten years for bankruptcy). If you do not understand something, ask. The credit bureau staff is required by law to explain your report to you.

If there is a mistake or you wish to challenge an incorrect entry in your credit report, use the Challenge to a Credit Report letter. You have a right to respond to a negative entry on your report and to have your response made part of your credit report. Usually the credit bureau will advise you to contact the party that provided the negative information directly.

If there are mistakes, you can take the following actions:

1. Notify the credit bureau of the problem by using the Challenge to a Credit Report letter in It's Legal.

   Provide as much information as you can about what is wrong with the report. The credit bureau must reinvestigate the disputed information at no charge to you. The credit bureau must correct any mistake or delete any information it cannot verify.

2. It may be helpful to contact the creditor directly to ensure that the creditor's records are correct.

3. If the above steps do not resolve the problem, you can file a written statement of up to 100 words with the credit bureau explaining your side of the story. This explanation will be included in your credit report.

Usually a copy of the actual credit report identifying the incorrect or challenged entry is useful for the credit bureau to investigate the problem.

There are instances in which you may not have a copy of the report. In such cases, identify the parties, the nature of the account, the outstanding balance on the account, and the nature of your complaint so that it may be easily identifiable.

Respond to the negative entry in your credit report file by explaining why the entry is incorrect; for example, explain that the outstanding balance is incorrect or payment already has been made. Provide all information which might be relevant and useful to the credit bureau investigating your complaint.

For more information, see:
CHALLENGE TO A DENIAL OF CREDIT
COPIES OF CREDIT REPORT FILE
CREDIT BUREAUS
CREDIT LETTERS
FAIR CREDIT REPORTING ACT
JOINT CREDIT REPORT
REQUEST FOR A CREDIT REPORT

Fair Credit Reporting Act

The Fair Credit Reporting Act covers all reporting on individuals as consumers when you apply for and obtain credit, employment, and insurance. The Act creates 13 consumer rights:

1. When a credit report is a factor in turning down an application, the reasons and the name and address of the credit reporting agency must be given.

2. Upon request, the credit reporting agency must inform you about the nature and substance of information in your credit file.

3. Upon request, the credit reporting agency must tell you who has received a report of your credit report file. This extends to the past six months for credit and insurance purposes, and to the past two years for employment purposes.

4. If you find inaccurate and unverifiable information, it must be deleted from your credit file.

5. When you find inaccurate information, the credit reporting agency must reinvestigate it.

6. If, after reinvestigating, the credit reporting agency determines that the information is accurate, you have a right to dispute the item. A brief explanation can be filed and made part of all future credit reports.

7. Your credit file must be kept confidential and used only for a legitimate business purpose.

8. Personal information in your credit file must not be provided to government agencies unless a court order is obtained.

9. If adverse personal information is in public records, you must be informed when it is reported for employment purposes. You also can have this information kept current.

10. Adverse information must be deleted after seven years, or ten years for bankruptcy.

11. If an investigative report is made on your personal life, you have the right to be informed, upon request, of the scope and nature of the report.

12. If you find that an investigative report contains adverse information, you have the right to have that item reinvestigated before the report can be reused.

13. If a credit reporting agency is negligent, you can collect actual damages. If the negligence was willful, it may be possible to collect punitive damages plus attorney's fees and court costs.

If you have any questions or concerns regarding any of the above-mentioned "rights," consult your personal attorney. Remember, you are responsible for ensuring that your credit file is updated and accurate.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT

INVESTIGATIVE REPORT
REQUEST FOR A CREDIT REPORT

Challenge to a Denial of Credit

If your application for a loan or purchase of item(s) on credit has been denied, you can request the reasons or additional information regarding the denial. If unfavorable action is taken regarding an existing account, you can request the reasons and additional information related to such action. You must make this request within 60 days of receiving a denial of credit or notice of other adverse action.

The lending institution or entity extending credit must disclose the nature of the adverse information. The lending institution is generally required to respond to your request within 30 days of receiving it. The institution should give you sufficient identifying information to allow you to verify the accuracy. If the reason is incorrect, you may use this letter to advise the lending institution of the correct information.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CREDIT LETTERS
FAIR CREDIT REPORTING ACT
INVESTIGATIVE REPORT
REQUEST FOR A CREDIT REPORT

Investigative Report

An investigative consumer report is a special credit report with more detail than a routine report. It includes information about your character, general reputation, and personal characteristics. It also may include information from interviews with neighbors, friends, or associates, and information concerning your credit standing and driving habits and record.

If the information you receive from the lending institution indicates that an investigative report is being undertaken, you have the right (within a reasonable period of time) to request, in writing, a complete and accurate description of its nature and scope.

The lending institution must provide this information not later than five days after receiving your request. It is not required to respond unless an investigation actually is performed, nor is it required to provide you information sources or a copy of the completed report.

Financial institution regulators recommend that institutions provide a complete and accurate description of the types of questions to be asked and the number and types of persons to be interviewed, along with the name and address of the investigating agency.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
FAIR CREDIT REPORTING ACT
REQUEST FOR A CREDIT REPORT

Questions About Your Credit Card Bill

If you see a charge on your statement that you do not recognize, first re-check your records to see if there is a charge you may have forgotten. It is a good idea to keep your copy of all credit card receipts until those charges appear on your statement. Also check to see if you've made any telephone or mail order charges.

Ask others who have access to your account if they made the charge. Also check to see if the amount and date of the charge are familiar, even if you do not recognize the place or the merchant's name. Companies may bill under a different name or from a central location.

If you still do not recognize the transaction and think there is an error, or if you have a dispute with a merchant over the quality of merchandise or services, write the credit card company.

Federal law provides specific rules that the card issuer must follow for promptly correcting billing errors. The card issuer provides a statement describing these rules when a credit card account is opened, with additional notices at least one a year. Many card issuers print a summary of your rights on each bill they send you.

For more information, see:
ADDITIONAL CREDIT CARD INFORMATION
CREDIT CARD BILLING RIGHTS
DISPUTES ABOUT MERCHANDISE OR SERVICES
FOLLOWUP OF CREDIT CARD INQUIRY

Credit Card Billing Rights

The Federal Truth in Lending Act requires prompt correction of billing mistakes. If you think your credit card statement contains an error, or if you need more information about a transaction on your bill, write your inquiry on a separate sheet of paper. Do not write on the bill itself.

To protect your rights, the Issuer must receive your written inquiry no later than 60 days after they send you the first bill in which the error or problem appeared. Send your letter by certified mail, with a return receipt requested, to have proof that the card issuer received your letter.

Write to the Issuer at the address designated on the statement for such inquiries. Many times this is a different address than the one to which payments are made on your account.

Your letter must include:

* Cardholder's name and account number.
* The dollar amount of the suspected error.
* Description of the error, and why you believe there is an error.
* If you need more information, describe the item of which you are unsure.
* Sign the letter.

While the error is being investigated, you do not have to pay any amount in question. If you have authorized payment of the bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter must reach the Issuer within the specified number of business days before the automatic payment is scheduled to occur.

However, you are obligated to pay the remaining amount due which is not in question. The Issuer cannot report the amount under investigation as delinquent or take any action to collect the amount in question.

The Issuer can continue to bill you for the amount in question, including finance charges, and can apply any unpaid amount against your credit limit. If the Issuer finds there was a mistake on the bill, you will not have to pay any finance charges related to the amount in error.

For more information, see:
ADDITIONAL CREDIT CARD INFORMATION
DISPUTES ABOUT MERCHANDISE OR SERVICES
FOLLOWUP OF CREDIT CARD INQUIRY
QUESTIONS ABOUT YOUR CREDIT CARD BILL

Disputes About Merchandise or Services

If you have a problem with the quality of goods or services that you purchase with a credit card, first, you must attempt to correct the problem with the merchant. If you do not receive satisfaction, you have the right to withhold payment for the merchandise or services. You can withhold payment up to the amount of credit outstanding for the purchase, plus any finance charges. Write the Issuer to pursue this remedy.

This protection only applies if the purchase price was more than $50.00, and the purchase was made in your home state or within 100 miles of your mailing address. All purchases are covered regardless of the amount or location of purchase if the Issuer owns or operates the merchant, or the goods or services were purchased from an advertisement mailed to you by the Issuer.

If the above conditions preclude you from pursuing the matter through the issuer, you may want to consider filing an action in small claims court - an informal legal proceeding that can be used to settle disputes. The maximum amount that can be claimed or awarded varies from state to state, but most small claims courts hear cases involving amounts ranging from $25 to $1,500. Check your local telephone book under your municipal, county, or state government headings for small claims court listings.

For more information, see:
ADDITIONAL CREDIT CARD INFORMATION
CREDIT CARD BILLING RIGHTS
FOLLOWUP OF CREDIT CARD INQUIRY
QUESTIONS ABOUT YOUR CREDIT CARD BILL

Follow-up of Credit Card Inquiry

The Issuer must acknowledge your letter within 30 days, unless they have corrected the error by then. Within 90 days of receiving your letter, the Issuer must investigate the error, and either correct the error or explain why the bill is correct. The Issuer must send you a statement of the amount you owe and the date that it is due if the bill is found to be correct.

If the Issuer's explanation does not satisfy you, you must write the Issuer within 10 days telling them that you still refuse to pay. The Issuer may report you as delinquent at this point, but that report must also state that you have a question about your bill. The Issuer must tell you the name of anyone to whom this information is reported. When the matter is finally settled, the Issuer must tell anyone to whom a report was made, that the matter has been settled.

If you continue to have problems with the card issuer, seek the advice of legal counsel or contact your local consumer protection agency. If the Issuer fails to make a proper response to a claim of billing error, it cannot collect the first $50.00 of the questioned amount and applicable finance charges, even if your bill was correct.

For more information, see:
ADDITIONAL CREDIT CARD INFORMATION
CREDIT CARD BILLING RIGHTS
DISPUTES ABOUT MERCHANDISE OR SERVICES
QUESTIONS ABOUT YOUR CREDIT CARD BILL

Additional Credit Card Information

Send a copy, but not the original of the statements or charge slips to the Issuer. You may ask for evidence of the charge such as a copy of the charge slip. Keep copies of all correspondence with the Issuer, including copies of statements and charge slips. You may need to refer to it, or send additional copies to the Issuer if you do not receive a prompt response to your inquiry.

Take care not to let others see or hear your credit card number. Most merchants now use carbonless credit slips. However, destroy any carbons, carefully dispose of statements and charge slips. Never give your card number over the phone unless you are initiating a transaction with a reputable company. If you have questions about a company, check with the local consumer protection office or Better Business Bureau before ordering.

If your cards are lost or stolen, immediately call the Issuer. It is a good idea to keep a record of all cards issued to you, as well as the Issuer's phone number. This information is generally contained on the back of each monthly statement. Under federal law, if your credit card is used without your authorization, your maximum liability is $50.00 per card. If you report the loss before the card is used, the card issuer cannot hold you responsible for any unauthorized charges.

For more information, see:
CREDIT CARD BILLING RIGHTS
DISPUTES ABOUT MERCHANDISE OR SERVICES
FOLLOWUP OF CREDIT CARD INQUIRY
QUESTIONS ABOUT YOUR CREDIT CARD BILL

Demand for Money Owed

The only permissible purpose of the Demand for Money Owed letter is for a creditor acting on his or her own behalf to collect debts owed to him or her. The person preparing and signing this letter must be the person claiming the amount of money owed.

If the letter is not prepared for this purpose, you may be required to comply with the stringent requirements of the Fair Debt Collection Practices Act. Your state may have its own collection requirements which also need to be considered. Contact your state's attorney general's office or an attorney for such information.

If the letter is prepared for collecting money owed to someone else, it is necessary for you to see your attorney to determine whether or not you qualify for one of the exceptions under the Fair Debt Collection Practices Act or whether you satisfy your individual state's requirements.

When demanding payment for money owed on a past due account, promissory note, or agreement, it is customary to allow ten to thirty days from the date of the demand. The deadline for payment must be a reasonable time after the date of the letter and should not be less than 10 days.

For more information, see:
ACCRUED INTEREST ILLUSTRATION
CREDIT LETTERS
EXHIBIT
FAIR DEBT COLLECTION PRACTICES ACT
RECOURSE AGAINST COLLECTION

Accrued Interest Illustration

The following example illustrates how to calculate "accrued interest" for the Demand for Money Owed letter.

Assume the following facts:

1. The debtor owes you $5,000.00 on an account or note that had an original balance of $8,000.00.
2. The amount owed bears interest at an annual rate of 12 percent.
3. Interest is owed from January 15, 1994.
4. The current date (or other specified date) is May 17, 1994.

You must calculate the accrued interest through the current (or specified) date. You must also calculate the amount of interest that will be owed for each additional day after the specified date that the debt remains unpaid.

To determine the accrued interest amount:

1. Calculate the days from January 15 through May 17. (16 + 28 + 31 + 30 + 17 = 122)
2. The interest rate of 12 percent becomes the decimal figure .12.
3. The accrued interest amount is $200.55, based on this calculation: $5,000.00 x .12 x 122/365 = $200.55.

The program automatically calculates the daily accrual of interest as follows:

1. It calculates the annual amount of interest: $5,000.00 x .12 = 600.00.
2. It divides the annual amount of interest by 365 to obtain the daily accrual amount: $600.00/365 = $1.64.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
COMPLAINT TO ATTORNEY GENERAL'S OFFICE
COMPLAINT TO BETTER BUSINESS BUREAUS
CONSUMER LETTERS
DEMAND FOR MONEY OWED
RECOURSE AGAINST COLLECTION
REQUEST FOR A CREDIT REPORT

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act covers the collection of any personal, family, or household debt. The Act applies to the following:

1. Any person in the business of collecting debts.
2. Any creditor who collects debts using a name other than his/her own.
3. Anyone who collects or tries to collect debts for another person.

The Act does NOT apply to banks, other lenders, or businesses that collect their own debts, using their own names.

A collector may contact a person other than the debtor ONLY for the purpose of locating the debtor. In doing so, the collector must do the following:

1. Identify himself or herself.
2. Not reveal the consumer's debt.
3. Not use a postcard or any other means that might reveal the debt-collection activity.
4. Not contact the person more than once unless absolutely necessary.
5. If the collector learns the identity of an attorney who is representing the debtor, the contact must be with that attorney.

A collector CANNOT do the following:

1. Contact the debtor before 8 a.m. or after 9 p.m.
2. Contact the debtor at unusual places.
3. Contact the debtor at the place of employment if it is known that the employer prohibits such contact.
4. Harass or abuse the debtor. This includes, but is not limited to:

    a. Using or threatening violence or harm to the person, the person's reputation, or property;
    b. Using obscene language;
    c. Publicizing the debt;
    d. Making annoying, repetitive, or anonymous phone calls;
    e. Providing false or misleading information as to the collector's identity;
    f. Collecting an additional fee not authorized by law or the terms of the debt agreement;
    g. Charging the debtor with collect calls or telegram fees;
    h. Communicating by postcard.

5. During the period when a debt is being verified, the collector may not ask for payment.

Within five days of contacting a debtor, the collector must send a written letter that includes the following information:

1. The amount of the debt.
2. The name of the creditor.
3. Notice that the debt will be assumed to be valid unless disputed within 30 days.
4. Notice that if the debt is disputed, the collector will verify and send a copy of the verification of judgment against the consumer.

If a debt collector does not comply with the Fair Debt Collection Practices Act, the debtor may sue the collector within one year after the violation. It may be possible for the debtor to recover actual damages, additional damages up to $1,000, court costs, and reasonable attorney's fees.

If you have any questions or concerns regarding the application of the Act, consult your personal attorney.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
DEMAND FOR MONEY OWED
INVESTIGATIVE REPORT
RECOURSE AGAINST COLLECTION
REQUEST FOR A CREDIT REPORT

Recourse Against Collection

The purpose of this letter is to respond to a demand letter sent to you by a creditor regarding your Account, Promissory Note, or Agreement. This is your opportunity to explain why the demand for payment is incorrect. You might explain, for example, that the balance is incorrect, a discount was not honored, payment has been made, or the invoice was never received because of a change in address.

Your rights as a debtor are governed by both the Fair Debt Collection Practices Act and your state's own collection requirements. If you have any questions about the applicability of these requirements to you, consult your personal attorney.

Attach copies of returned checks, payment records, and any other documentation which supports your claim that the balance as stated in the demand letter is incorrect. If you have documentation to support your claim for a discount, attach it to this letter. If you have a copy of a returned check in payment of the amount owed, it is helpful to attach it also. Do NOT send original documents.

For more information, see:
CREDIT LETTERS
DEMAND FOR MONEY OWED
FAIR DEBT COLLECTION PRACTICES ACT

Request for a Credit Report

If you have been denied credit or if other adverse action regarding your credit has been taken on the basis of a consumer credit report, you may want to use the "Request for Credit Report" to obtain a copy of your credit report and verify the information contained in it. If the information reported is incorrect, you may use the "Challenge to a Credit Report Letter" to provide correct information to the credit reporting agency.

The purpose of the Request for a Credit Report letter is to assist you in obtaining a copy of your credit history, particularly if you have been denied credit within the last 30 days. The credit report tells how you have managed credit in the past. Companies examine your credit report before deciding whether to give you credit. The Fair Credit Reporting Act does not permit you to obtain a copy of your credit report by telephone due to the confidential nature of your credit file. However, a copy can be obtained by a signed written request. If a joint credit report of a husband and wife is requested, both the husband and wife must sign the request. This request can be made in the form of a letter.

If you have moved within the last several years, credit bureaus require previous address information. You will need to include all addresses you have had for the last 2 to 5 years, depending on the credit bureau. If you are making a joint request, provide the previous address of both spouses.

In addition, other information, including date of birth, social security number, employer, and phone number may be required. Some credit bureaus require that you provide proof of identity such as a copy of your driver's license, military ID, insurance ID, or a current utility bill.

When you receive your credit report you should carefully review it. You have the right to respond to a negative entry on your report and to have your response made part of your credit report.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
COMPLIMENTARY CREDIT REPORT
COPIES OF CREDIT REPORT FILE
CREDIT BUREAUS
CREDIT LETTERS
CREDIT REPORT FEES
FAIR CREDIT REPORTING ACT
JOINT CREDIT REPORT

Credit Bureaus

The first step in obtaining your credit report is to check the telephone directory in your area for the name and address of the local credit bureaus. You may find them listed in the telephone Yellow Pages under "Credit Bureaus" or "Credit Reporting Agencies." Your local bank or retailer also may be able to identify them. Credit bureaus must share with you any information they have on file about you. Call the credit bureau to determine the fee that you will be charged to obtain a copy of your credit report. If you have been denied credit in the last 30 days, there should be no charge. Most credit bureaus will mail you a copy of your report, but you may wish to visit their offices to review your credit report.

There are three main credit bureau agencies in the United States that have credit information:

* Equifax
* TRW Credit
* TransUnion Corporation

The local credit bureaus have access to the information from your file through one of these three main agencies. Although these main bureaus have basically the same information from which to compile the report, they may provide slightly different information depending on a number of factors: 1) the geographic location in which the company is the strongest, 2) how quickly they can obtain the information, 3) their general access to the information, and 4) the number of times you have moved or changed addresses.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CHALLENGE TO A DENIAL OF CREDIT
COMPLIMENTARY CREDIT REPORT
COPIES OF CREDIT REPORT FILE
CREDIT REPORT FEES
FAIR CREDIT REPORTING ACT
JOINT CREDIT REPORT
REQUEST FOR A CREDIT REPORT

Joint Credit Report

If a joint credit report is requested for a husband and wife, each spouse must provide his or her full name, current address and previous address within the last several years, social security number, date of birth, current employer, and phone number during normal business hours. In addition, it is necessary for both spouses to sign the letter.

If your name includes Jr., Sr., III, or a similar appendage, be sure to include this with your name.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CREDIT BUREAUS
CREDIT REPORT FEES
FAIR CREDIT REPORTING ACT
REQUEST FOR A CREDIT REPORT

Credit Report Fees

The fee for obtaining a credit report ranges from $8.00 for an individual report to $25.00 for a joint report of a husband and wife. Contact the credit bureau to whom you are sending the request to find out the cost of obtaining a report. For information regarding a free credit report, see the "Complimentary Credit Report" section of this guide.

If you have been denied credit within the last 30 days, your credit report should be provided free of charge, but it is necessary for you to provide a copy of the letter from the company, agency, or organization which denied you credit within the last 30 days.

For more information, see:
COMPLIMENTARY CREDIT REPORT
CREDIT BUREAUS
FAIR CREDIT REPORTING ACT
REQUEST FOR A CREDIT REPORT

Copies of Credit Report File

If you have a copy of the credit report file, it is advisable to enclose a copy of the report and circle, highlight or otherwise identify the portion of the credit report file which you are challenging.

Obviously, enclosing a copy of the credit report file with the entry highlighted or circled is the best practice. There are, however, instances in which you may not have a copy of the report. In such cases, you should identify the parties, the nature of the account, the outstanding balance on the account, and the nature of your complaint so that it may be easily identifiable.

For more information, see:
CHALLENGE TO A CREDIT REPORT
COPIES FOR CREDIT LETTERS
CREDIT BUREAUS
FAIR CREDIT REPORTING ACT
JOINT CREDIT REPORT
REQUEST FOR A CREDIT REPORT

Complimentary Credit Report

TRW now provides one free credit report each calendar year. To obtain this free report you must write to:

TRW
P.O. Box 2350
Chatsworth, CA 91313-2350
ATTN: Complimentary Report Request

You must provide your full name, current address and addresses for the past 5 years, social security number, year of birth, and your spouse's name. Also, you must include a proof of identity such as a copy of your driver's license, military ID, insurance ID, or a current utility bill.

For more information, see:
CHALLENGE TO A CREDIT REPORT
CREDIT BUREAUS
CREDIT REPORT FEES
REQUEST FOR A CREDIT REPORT

Copies for Credit Letters

If available, attach copies of all documentation which supports your claim that the credit card statement is incorrect, including credit card charge slips, receipts, or proof of payment. Do NOT send your original documents.

For more information, see:
CREDIT LETTERS
RECOURSE AGAINST COLLECTION

Corporate Documents

It's Legal provides five documents that you may find useful. These are: Board Minutes for small corporations, Corporate Action by Consent for corporate action in lieu of a meeting, a Notice and Waiver of Notice regarding corporate meetings, a Corporate Worksheet which contains information about members of the Board of Directors, corporate officers and stockholders and a Business Entity Planning Worksheet which contains information primarily about "for profit" businesses. Additionally, a Confidentiality Agreement, which may be used between companies as well as in an employer/employee relationship is available through the Employment Documents menu in It's Legal.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
CONFIDENTIALITY AGREEMENT
CORPORATE WORKSHEET
MINUTES AND UNANIMOUS CONSENT
NOTICE AND WAIVER

Minutes and Unanimous Consent

A corporation takes official action through its board of directors and/or its shareholders. The shareholders, as the owners of the corporation, elect the directors and take other significant corporate action. The directors are responsible for general management of the corporation, and elect officers to carry out their instructions. Directors and shareholders formalize their official actions by making a written record. The written record may be in the form of "minutes", if the board and/or shareholders met formally, or in the form of a "corporate action by unanimous consent, " if the action was taken without a meeting. The Minutes and Corporate Action by Consent documents offered by this program are intended primarily for use by small corporations that limit their documentation to one set of minutes (or action by unanimous consent) per year. The program offers typical resolutions and provisions used by small corporations and provides appropriate explanations. The program also provides opportunities to include unique provisions for special circumstances. Some guidance is offered regarding corporate action that is more likely to be taken by shareholders than directors.

Corporate laws in most states offer shareholders considerable flexibility in requiring that certain actions MUST be taken by shareholders or MAY be taken by directors. Such requirements, if any, will generally be found in the corporation's incorporation documents. Incorporation documents generally include the corporation's "articles of incorporation" (sometimes referred to as the "charter") and the bylaws. You should refer to those documents to help you answer questions regarding whether a specific corporate resolution should be adopted by the shareholders or the directors.

After the preparation of "minutes" or "corporate action by unanimous consent, " it is recommended that a lawyer review the document to assure compliance with corporate documents and applicable state corporate law. It is also important to have a lawyer review the minutes or corporate action by unanimous consent if the corporation is (or has been) involved in unusual transactions, or if the corporation has more than one class of stock. Different classes of stock may have different voting rights, values, and characteristics.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE DOCUMENTS
CORPORATE - OTHER
CORPORATE WORKSHEET
ELECTION OF CHAIR
ELECTION OF DIRECTORS AND OFFICERS
ISSUANCE OF STOCK
NEXT MEETING
NOTICE AND WAIVER
QUORUMS AND PROXIES
REPORTS
SIGNING MINUTES/UNANIMOUS CONSENT
UNANIMOUS CONSENT

Unanimous Consent

Generally, corporate action is taken at a formal meeting and such actions are recorded as "resolutions" in the "minutes". Corporations with ten or fewer shareholders, and even fewer directors, (i.e., "closely held corporations") may find that it is easier to make decisions informally without a meeting. In such cases, the corporate action may be taken by a resolution signed by all of the shareholders (or directors) with no meeting (i.e., "corporate action by unanimous consent"). The incorporation documents should be reviewed for possible restrictions on the use of "action by unanimous consent". A few states permit "action without a meeting" upon the written agreement of 90% of the directors.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
ELECTION OF CHAIR
ELECTION OF DIRECTORS AND OFFICERS
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
NEXT MEETING
NOTICE AND WAIVER
QUORUMS AND PROXIES
REPORTS
SIGNING MINUTES/UNANIMOUS CONSENT

Notice and Waiver

Generally, if corporate action will be taken at a meeting, the shareholders or directors are entitled to formal notice of the time, date and place of meeting. There are two exceptions. First, in the case of a "regular" meeting of the board of directors, notice may not be required if the time, date, and place of the meeting were provided at the last meeting, or if the bylaws specify that notice of such meetings is not required. Second, the directors and/or shareholders may "waive" the notice requirement by signing a short document, a "waiver", consenting to the lack of notice for a particular meeting.

It's Legal's Notice/Waiver document can be used to prepare a "notice" or to "waive" the notice requirement. The "notice" option allows the user to prepare a notice to the directors and/or shareholders which advises them of the meeting. A copy of the notice can then be attached to the minutes as evidence that notice was provided. The "waiver" option allows the user to generate waivers for the directors and/or shareholders.

For more information, see:
CORPORATE DOCUMENTS
MINUTES AND UNANIMOUS CONSENT
NEXT MEETING
QUORUMS AND PROXIES
SIGNING MINUTES/UNANIMOUS CONSENT
UNANIMOUS CONSENT

Quorums and Proxies

A corporation cannot take action legally, unless a "quorum" is present. A "quorum is the minimum number of (i) directors who must be present at a directors meeting, or (ii) shares of stock that must be represented by shareholders at a shareholders' meeting in order to conduct business or take action. For example, if a corporation has 9 directors, and if the bylaws provide that a majority of the directors constitutes a quorum, then 5 directors must be present at the meeting in order to take official action.

If the meeting is a shareholders meeting, satisfying the quorum requirement requires a review of the number of shares represented by the shareholders. It is not simply a matter of determining how many shareholders are present. The following example provides an illustration. Assume that a corporation has 4 stockholders who own stock as follows: Alice 35, Bob 30, Cathy 20, and Don 15. Assume further that there is a 60% quorum requirement. In this situation, the quorum requirement is met if just Alice and Bob are present, because they own a combined total of 65% of the shares of stock. However, if Alice is not present, all three of the remaining shareholder would need to be present in order to have a sufficient amount of stock represented at the meeting.

The above example ignores the possibility of a stockholder being "present" at a meeting through a "proxy". A "proxy" is an agreement (usually written) that permits an agent or a substitute to represent a shareholder at a shareholders' meeting. In the above example, official action could be taken at a shareholders meeting without Alice, if Alice signed a written agreement that designated someone else (perhaps one of the other shareholders) to represent her at the meeting, and if the person she designated was present at the meeting (with a copy of the written agreement or other proof of the proxy arrangement).

For more information, see:
MINUTES AND UNANIMOUS CONSENT
NOTICE AND WAIVER
NEXT MEETING
SIGNING MINUTES/UNANIMOUS CONSENT
UNANIMOUS CONSENT

Approval Requirement

Generally, corporate action is taken by a simple majority of (i) the directors present at a directors meeting, or (ii) shareholders present (or represented by proxy) at a shareholders' meeting who own a majority of the corporation's outstanding stock. However, the shareholders are permitted to set a higher or lower approval requirement. For example, it is not unusual for the bylaws to include a provision that requires a two-thirds approval in order to amend the bylaws. In some cases, a higher approval may be required for all director and shareholder actions, not just certain types of actions. The incorporation documents, including the bylaws, should be reviewed to determine whether there are such requirements.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
REPORTS
UNANIMOUS CONSENT

Election of Chair

It is common for the minutes of a corporate meeting to specify the person who chaired the meeting, as well as the person who recorded the minutes. The bylaws may specify the persons who should fulfill these roles. For example, the bylaws may specify that the president shall chair directors and shareholders meetings and that the secretary shall record the minutes.

For more information, see:
CORPORATE WORKSHEET
ELECTION OF DIRECTORS AND OFFICERS
MINUTES AND UNANIMOUS CONSENT
UNANIMOUS CONSENT

Election of Directors and Officers

Generally, the shareholders elect directors in accordance with the bylaws. The election is usually held on an annual basis. In some cases, all directors are elected each year. In other cases, they are elected on a "staggered" basis. For example, a corporation with 5 directors might have a bylaws provision that provides for 2 year directors' terms with 2 directors elected every other year and 3 directors elected in the alternate years.

Officers are also elected in accordance with the bylaws, and are usually elected by the directors, rather than by the shareholders.

For more information, see:
CORPORATE WORKSHEET
ELECTION OF CHAIR
MINUTES AND UNANIMOUS CONSENT
UNANIMOUS CONSENT

Reports

It is not unusual for officers or corporate employees to present reports at directors and/or shareholders meetings that explain certain corporate matters, but do not require formal action. For example, the corporate treasurer may report on the status of a borrowing request that has been submitted to a lender, or a marketing person may report on quarterly sales.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
UNANIMOUS CONSENT

Adoption of Documents and Plans

This optional section permits the user to record the corporation's adoption of certain types of documents and plans. It is expected that a copy of the document (or plan) will be attached as part of the minutes. Generally, these documents represent very important transactions that may require both director and shareholder approval. These actions may also require a higher than normal approval vote. The content of the listed documents is beyond the scope of this program; it is highly recommended that an attorney's advice be obtained if any of these transactions has occurred (or will occur).

For more information, see:
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
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UNANIMOUS CONSENT

Approval of Past Actions

For the protection of persons who have taken action on behalf of the corporation, it is not unusual for the directors and/or stockholders to approve these actions on an annual basis. The "Approval of Actions" section of this program includes an "all actions subsequent to the last meeting" option which provides general approval. Other important actions can be mentioned specifically. These actions may include officer compensation, transactions with related parties, and purchases of significant assets.

The "Financial Statement" section provides for the acceptance and approval of the corporation's financial statements.

Other sections of this program provide for the authorization of future action to be taken at a future date.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
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MINUTES AND UNANIMOUS CONSENT
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UNANIMOUS CONSENT

Authorization of Future Actions

This program provides a variety of opportunities to show the authorization of specific types of corporation action that will occur in the future. For example, the "Authorization of Action" section provides options that authorize lease arrangements and the establishment of insurance and pension plans.

Other optional sections regarding the following items allow for authorization of various actions that involve the payment of corporate funds:

- Salaries.
- Bonuses.
- Directors fees.
- Contributions to profit sharing plans.
- Dividends.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
REPORTS
UNANIMOUS CONSENT

Issuance of Stock

If stock will be sold or issued, the approval of the shareholders should be obtained. The issuance of stock may be subject to "preemptive" rights which entitle current shareholders to acquire a percentage of the new stock so that the individual percentages of ownership in the corporation are not reduced or diluted by the new issuance. If the corporation has more than one class of stock, the approval of all classes of stock is generally required. You should refer to your incorporation documents and/or obtain the opinion of legal counsel.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
BORROWING AND BANKING MATTERS
CORPORATE - OTHER
CORPORATE WORKSHEET
MINUTES AND UNANIMOUS CONSENT
REPORTS
UNANIMOUS CONSENT

Borrowing and Banking Matters

The process of obtaining a loan from a lending institution (e.g. a bank) may include a requirement that the board of directors and/or the shareholders authorize the loan transaction. This authorization is provided in the form of a "borrowing resolution" and shows that the officers of the corporation are authorized to sign the loan documents.

In addition, when a bank account is opened, a "banking resolution" may be required to establish the identities of the officers or employees who are authorized to sign checks on behalf of the corporation.

For more information, see:
ADOPTION OF DOCUMENTS AND PLANS
APPROVAL OF PAST ACTIONS
APPROVAL REQUIREMENT
AUTHORIZATION OF FUTURE ACTIONS
CORPORATE - OTHER
CORPORATE WORKSHEET
ISSUANCE OF STOCK
MINUTES AND UNANIMOUS CONSENT
REPORTS
UNANIMOUS CONSENT

Corporate - Other

There may be actions taken by the directors and/or shareholders that are unique or unusual. This optional "other" section allows the user to include such actions.

Next Meeting

Although not mandatory it may be desirable to specify the time and location of the next meeting. This provision is more likely to be used in connection with "minutes" for a regular meeting of the board of directors. It is less likely to be used in connection with annual and special meetings, or with the preparation of "unanimous consent" documents.

For more information, see:
MINUTES AND UNANIMOUS CONSENT
NOTICE AND WAIVER
QUORUMS AND PROXIES
SIGNING MINUTES/UNANIMOUS CONSENT
UNANIMOUS CONSENT

Signing of Minutes or Unanimous Consent

"Minutes" are usually signed by the secretary or other person who recorded the minutes of the meeting. "Unanimous" consent documents must be signed by all of the directors and/or shareholders as the case may be.

Corporate Worksheet

The Corporate Worksheet is offered as an easy and convenient way to organize and print business records regarding shareholders, directors, officers, employees, and any other related parties. This non-legal document uses the same format as the "business" records in the Personal Information section of It's Legal. By "pasting" from the "business" records in the Personal Information section to the Corporate Worksheet, a custom report can be generated. For example, a list of directors for an upcoming board meeting can be generated.

The Corporate Worksheet can also be used to organize and print Individual records associated with the Personal Information Browser.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
CORPORATE DOCUMENTS
MINUTES AND UNANIMOUS CONSENT
NOTICE AND WAIVER
UNANIMOUS CONSENT

Business Entity Planning Worksheet

The purpose of the Business Entity Planning Worksheet is to identify basic information that is needed to form a new business or change the form of an existing business. It's Legal provides information regarding the following entities:

- Sole proprietorship.
- Partnership (general).
- Limited partnership.
- "C" corporation (regular).
- "S" corporation.
- Limited liability company.

This program also requests the preferences of the owners to determine which business entity (or entities) may be the most appropriate form of business. This information can then be provided to an attorney, accountant, or other tax expert who will assist with the determination of the appropriate entity. Generally, liability and income tax considerations are the most important factors in the selection of a particular business structure. The summary provided by the program is not an adequate substitute for the expert advice of an attorney, accountant, or other knowledgeable business consultant.

For more information, see:
"C" CORPORATION
DISTRIBUTIONS TO OWNERS
FRINGE BENEFITS
GENERAL PARTNERSHIP
LIMITED LIABILITY
LIMITED LIABILITY COMPANY
LIMITED PARTNERSHIP
NUMBER OF OWNERS
OTHER FACTORS
OWNER PREFERENCES
"S" CORPORATION
SOLE PROPRIETORSHIP
TAXATION OF BUSINESS INCOME

Sole Proprietorship

A sole proprietorship is an unincorporated business owned and managed entirely by one person (except to the extent that the owner may delegate management responsibilities to an employee). It is the simplest form of business and has the following characteristics:

1. The income and expenses are reported on Schedule C of the owner's individual income tax return (Form 1040).

2. The owner withdraws equity from the business by withdrawing cash or using business funds for personal uses.

3. The owner is personally liable for all of the debts and expenses of the business, that is, the owner's liability is "unlimited".

4. A sole proprietor generally has less flexibility to deduct the costs of fringe benefits and is required to use a calendar year for tax purposes.

5. A sole proprietorship terminates with the death of the sole proprietor.

6. No organizational formalities are required for a sole proprietorship. If the business uses a trade name, the owner may be required to register the trade name with the appropriate state and/or county officials.

The sole proprietorship form of business is most often used for small, low-risk businesses that have only a few employees and no need for more than one owner.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
"C" CORPORATION
DISTRIBUTIONS TO OWNERS
FRINGE BENEFITS
GENERAL PARTNERSHIP
LIMITED LIABILITY
LIMITED LIABILITY COMPANY
LIMITED PARTNERSHIP
NUMBER OF OWNERS
OTHER FACTORS
OWNER PREFERENCES
"S" CORPORATION
TAXATION OF BUSINESS INCOME

General Partnership

In very simplistic terms, a general partnership is a sole proprietorship, except that the partnership is owned and managed by more than one owner. It has the following characteristics:

1. The income and expenses are reported on a separate business return (Form 1065). The net income of the partnership is then allocated to the partners on Schedule K-1 forms, and the individual partners report their respective shares of the income on their individual income tax returns (Form 1040).

2. The partners make distributions of the business income to themselves by paying partnership "draws" or making capital distributions.

3. Each partner is personally liable for all of the debts and expenses of the business, that is each partner's liability is "unlimited".

4. A partner may have more flexibility in deducting the costs of providing fringe benefits than a sole proprietor; however, the costs of the fringe benefits that are provided for the partners may not be deductible. Generally, a partnership must use a calendar year for tax purposes.

5. A partnership terminates when a partner withdraws from the partnership or dies, but this result can be modified by making appropriate arrangements in a partnership agreement.

6. Generally, organizational formalities are not required by statute to form a partnership, but it is advisable to have a partnership agreement that sets forth the agreement of the partners regarding the distribution of profits, the procedures for handling the death or withdrawal of a partner, and other matters. Many states have specific statutes that govern partners and partnerships, particularly in the absence of a partnership agreement. If the partnership uses a trade name, the owner may be required to register the trade name with the appropriate state and/or county officials.

The partnership form of business is most often used for small, low-risk businesses whose owners want to avoid the tax consequences that result from corporate ownership, and are willing to accept the liability risks associated with partnerships.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
"C" CORPORATION
DISTRIBUTIONS TO OWNERS
FRINGE BENEFITS
LIMITED LIABILITY
LIMITED LIABILITY COMPANY
LIMITED PARTNERSHIP
NUMBER OF OWNERS
OTHER FACTORS
OWNER PREFERENCES
"S" CORPORATION
SOLE PROPRIETORSHIP
TAXATION OF BUSINESS INCOME

Limited Partnership

A limited partnership is a form of business entity that is designed to cure one of the primary disadvantages of the general partnership, i.e., the "unlimited liability" problem. It differs from the general partnership as follows:

1. A limited partnership has one or more of both "general" and "limited" partners. The general partner is responsible for the management of the partnership and receives a share of partnership profits and losses. The limited partners share in the profits and losses, but are not permitted to have any management responsibilities. In return, their liability is limited to their respective capital contributions to the partnership. The general partner has unlimited liability.

2. Most states have specific limited partnership statutes that govern the formation and operation of limited partnerships. In such cases, it is usually a requirement that a certificate of limited partnership be filed with the secretary of state in a manner similar to the requirement that a corporation file articles of incorporation.

3. Limited partnership statutes usually require that the partnership name include the words "limited partnership" or the abbreviation "L.P."

The limited partnership form of business is most often used for specific projects, for which a developer (the general partner with technical and management expertise) wishes to attract investors (limited partners) who do not want the risk of personal liability and probably do not want to participate in management either.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
"C" CORPORATION
DISTRIBUTIONS TO OWNERS
FRINGE BENEFITS
GENERAL PARTNERSHIP
LIMITED LIABILITY
LIMITED LIABILITY COMPANY
NUMBER OF OWNERS
OTHER FACTORS
OWNER PREFERENCES
"S" CORPORATION
SOLE PROPRIETORSHIP
TAXATION OF BUSINESS INCOME

"C" Corporation

A "C" (or "regular") corporation is a separate legal entity owned by one or more shareholders. The shareholders elect directors who have overall responsibility for the management of the corporation. The directors elect officers who carry out the wishes of the directors. In small corporations, the shareholders may also be directors and officers.

1. The income and expenses are reported on a separate business return (Form 1120). Unlike the other forms of business entities, the corporation then pays taxes based on its net income, instead of allocating the income to the owners.

2. The directors and/or shareholders can authorize distributions of the business income to the shareholders by directing the payment of dividends. The payment of dividends can result in the "double taxation" problem discussed in the "Distributions to Owners" section of this Guide.

3. The owners of the business (the shareholders) enjoy "limited liability", that is, the shareholders are only liable for the debts and expenses of the corporation up to the amounts of their respective capital contributions.

4. Generally, corporations have the most flexibility in deducting the costs of providing fringe benefits, particularly the costs of fringe benefits that directly benefit owners (shareholders) who are also officers and/or employees of the corporation. A corporation may select any fiscal year for its tax year end.

5. Most corporations are perpetual, that is, the corporation continues to exist even though individual shareholders may die. This continued existence, however, does not mean that the corporation should not make plans for the possibility of the death of a shareholder, particularly if the shareholder owns many shares and/or is a key employee of the corporation.

6. All states have specific corporation statutes that govern the formation and operation of corporations. The corporation is formed by filing articles of incorporation (or a similar document) with the Secretary of State. Generally, a corporation adopts bylaws, elects officers, issues stock and takes other actions required by state law. After formation, the corporation must observe certain formalities in order to preserve its separate legal status. Annual reports must be filed with the state and state taxes must be paid or the corporation's existence may be canceled.

7. Corporation statutes usually require that the corporate name include some designation that the business is incorporated, such as the inclusion of "Corporation", "Incorporation", "Company", "Limited" or some abbreviation of those words, such as "Corp.", "Inc.", "Co." or "Ltd."

8. If the corporation will conduct business in other states, the corporation may need to "qualify" to do business in such states depending on the nature of the business activity within the particular state. This may require the filing as a "foreign corporation", applying for fictitious name registration, and paying appropriate state income and franchise taxes. Many states impose penalties for the failure to file as a foreign corporation.

"C" corporations are formed in cases where all of the owners wish to have "limited liability". In addition, the corporate form may be preferable if corporate tax rates are lower than individual rates.

For more information, see:

BUSINESS ENTITY PLANNING WORKSHEET
DISTRIBUTIONS TO OWNERS
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GENERAL PARTNERSHIP
LIMITED LIABILITY
LIMITED LIABILITY COMPANY
LIMITED PARTNERSHIP
NUMBER OF OWNERS
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OWNER PREFERENCES
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SOLE PROPRIETORSHIP
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"S" Corporation

An "S" corporation is a form of business entity that is designed to combine the "limited liability" feature of the "C" corporation with the tax consequences of the partnership. Thus, the "S" corporation differs from the "C" corporation as follows:

1. The owners (shareholders) of an "S" corporation elect such status by filing Form 2553 with the Internal Revenue Service. In all other respects, the formation of an "S" corporation is similar to the formation of a "C" corporation, i.e., articles of incorporation must be filed with the Secretary of State.

2. The income and expenses of an "S" corporation are reported on a separate business return (Form 1120S). Like the partnership, the net income of the corporation is then allocated to the owners (shareholders) on Schedule K-1 forms, and the individual shareholders report their respective shares of the income on their individual income tax returns (Form 1040).

3. Generally, the overall tax benefits of fringe benefits are less for an "S" corporation than a "C" corporation. For example, the costs of health insurance benefits provided to a shareholder (and employee) who owns 2% or more of the corporation are taxable income to the employee. In addition, an "S" corporation is generally required to use a calendar year as its tax year. Finally, there are other technical tax rules that apply to "S" corporations. For example, there are restrictions on the number of shareholders, i.e. 35, restrictions on what kinds of entities can be shareholders, and the corporation can issue only one type of stock. Election for S status must be made in a timely fashion after incorporation. Generally, the election must be filed with the IRS on or prior to the 15th day of the third month of corporate year in which the election will be effective. An election after that date is effective for the following tax year.

The "S" corporation form of business is most often used by owners who want the "limited liability" feature of the corporation, but do not want the tax consequences of a "C" corporation. In other words the owners want to either avoid the "double taxation" problem, or have the business income taxed at individual rates rather than corporate rates, or both.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
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DISTRIBUTIONS TO OWNERS
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Limited Liability Company

The limited liability company (LLC) is a form of business entity which represents a second attempt (in addition to the "S" corporation) to combine the "limited liability" feature of the "C" corporation with the tax consequences of the partnership. LLCs are a relative new form of business entity. Although Wyoming enacted the first LLC statute in 1977, other states did not follow suit in significant numbers until the early 1990s. The limited liability company has the following characteristics:

1. Similar to a corporation, LLC statutes provide that the owners ("members") of an LLC have limited liability.

2. To avoid the characterization by the Internal Revenue Service (IRS) that the LLC should be taxed as a corporation, the LLC statutes try to distinguish LLCs from corporations. The IRS has determined that the following four characteristics define a corporation:

   - Limited liability.
   - Continuity of life.
   - Centralization of management.
   - Free transferability of ownership.

   If the LLC has no more than 2 of these characteristics, the IRS has determined that the LLC will be considered a partnership for tax purposes, rather than a corporation.

3. The owners of the LLC have "limited liability" for the debts and expenses of the LLC. Because this limited liability characteristic is a given, the LLC is only allowed to have one of the other three characteristics. Generally, the LLC statutes try to allow the owners (members) to avoid all of the other 3 characteristics.

4. "Continuity of life" is the continuation of the business entity without regard to the deaths of the owners. Some LLC statutes avoid this characteristic by limiting the duration of the LLC to a specified number of years, and others simply provide that the duration of the LLC cannot be perpetual.

5. A corporation has "centralization of management" because of its management through a board of directors. This corporate characteristic can be avoided by giving all LLC members the right to be involved in the management of the LLC. If the owners of an LLC choose to allow only certain members to participate in management, the LLC can still avoid tax status as a corporation by avoiding two of the other three corporate characteristics.

6. Generally, the owners of a corporation can "freely transfer their ownership" in the corporation by selling their shares of stock. To avoid this corporate characteristic, LLC statutes provide that an owner (member) in an LLC may not transfer his/her shares without the consent of all of the other members. An LLC is not required to restrict ownership transfers, but if it fails to include such restrictions, the LLC will have to make sure that it fails two of the other four corporate characteristics.

7. Assuming that the business does not include more than 2 corporate characteristics, the LLC is treated by the Internal Revenue Service as a partnership for tax purposes. Therefore, the income and expenses are reported on the partnership tax return (Form 1065). The net income of the partnership is then allocated to the owners ("members") on Schedule K-1 forms, and the individual members report their respective shares of the income on their individual income tax returns (Form 1040).

8. Over 30 states now have specific LLC statutes that govern the formation and operation of LLCs. An LLC is formed by filing articles of organization with the Secretary of State. The LLC is also required to adopt an operating agreement that sets forth the rights and obligations of the owners, as well as how the LLC will be operated. Two or more persons must be members of an LLC at the time it is formed.

9. LLC statutes require that certain words such as "Limited Company" or "L.C." be included in the name of the LLC to show its status as an LLC.

The LLC form of business entity is used primarily by small businesses that want (i) limited liability, (ii) the tax benefits of a partnership, and (iii) freedom from the "S" corporation eligibility requirements. However, there are uncertainties involved with the formation of an LLC because it is a relatively new form of entity and not all states have LLC statutes. In other words, the state where the business is located, and any other state where business will be conducted, must have an LLC statute. As of August 31, 1993, the following states permit the formation of LLCs: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Virginia, West Virginia and Wyoming.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
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Owner Preferences

The purpose of the Owner Preferences section is to use the preferences of the owners to determine which business entity (or entities) may be the most appropriate form of business. The factors that are usually given the most weight in determining the appropriate form of business are (i) the amount of tax paid on the income of the business, (ii) the desirability of making substantial distributions of the business income to the owners, and (iii) limited liability protection for the owners. This section includes a chart that provides a score for each type of entity, based on the preferences of the owner(s). This summary may provide some guidance in the selection of a business entity form. However, it is inappropriate to select a business entity by simply selecting the entity form with the highest number of responses. Each form of entity has advantages and disadvantages that may be important or less important, depending on the circumstances that apply to a specific situation. The advice of an attorney, accountant, or other tax expert should be obtained before making a decision.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
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Taxation of Business Income

The income and expenses of a sole proprietorship are reported on Schedule C of the owner's individual income tax return (Form 1040). The income and expenses of partnerships (general and limited), "S" corporations, and limited liability companies are reported on a separate business return (Form 1065 or Form 1120S); however, the net income of the business is then allocated to the individual owners on Schedule K-1 forms, and the individual owners report their respective shares of the income on their individual income tax returns (Form 1040). A "C" corporation reports its income and expenses on Form 1120, and pays taxes on the income at corporate rates. Thus, the net business income of all business entities (except the "C" corporation) is taxed at individual rates. Corporate rates are generally lower if net business income does not exceed $75,000. If net business income is expected to be less than $75,000, a "C" corporation may be preferable. If net business income is expected to be more than $75,000, it may be preferable have some other form of business. This tax analysis is greatly simplified, and is not a substitute for the advice of a tax expert.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
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Distributions to Owners

The owner of a sole proprietorship withdraws equity from the business by withdrawing cash or using business funds for personal uses. A partnership (general or limited) or limited liability company makes distributions by paying partnership "draws" or making capital distributions. "S" corporations make distributions by paying dividends. The key points are:

- The business income of these entities is paid only once, i.e., at the individual level.

- Generally, distributions to the owners do not cause additional income to the owners.

The situation is different for a "C" corporation. "C" corporations also make distributions by paying dividends. However, the payment of dividends by a "C" corporation results in the "double taxation" problem.

- The business income of a "C" corporation is taxed at the corporate level.

- If dividends (distributions) are paid by the "C" corporation, there are two consequences:

  * First, the corporation is not allowed to deduct the payment of the dividends in determining its net income.

  * Second, the dividends received by the owners are taxable income to the owners.

- Thus, the income of a "C" corporation is taxed once when the corporation pays tax on its income, and then again when the dividends are paid to the owners who must report such income on their personal returns (i.e., double taxation).

It is evident that this double taxation problem is a deterrent from making distributions of dividends from a "C" corporation. In some cases, it may be possible for a "C" corporation to avoid double taxation by making distributions to owners in the form of increased salaries, directors fees, or lease payments (for equipment or facilities owned by an owner and leased to the business). Because such distributions are deductible in computing the corporation's income (unlike the payment of dividends), such income is only taxed once, that is, at the individual level.

This factor of making distributions is not equally important for all businesses. A manufacturing business may have a high need for capital, and as a result, the owners may expect to withdraw very little of the business income for the direct benefit of the owners. Instead, the owners may choose to leave the income in the business so that it can be used to help finance expansion of the business. On the other hand, a business that is less capital intensive, perhaps a service company, may wish to distribute substantial amounts of its income to the owner(s).

For more information, see:
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Limited Liability

Owners of sole proprietorships and general partnerships are liable for all of the debts and expenses of the business, that is their liability is "unlimited". The owners of corporations and limited liability companies enjoy limited liability, that is their liability is limited to the amount of capital that they contribute to the business. A limited partnership is somewhat of a hybrid -- the general partner has unlimited liability (and the right to manage the partnership) and the limited partners have limited liability (but no participation in management decisions).

Some protection against "unlimited" liability can be obtained through appropriate liability insurance, although some kinds of liability may be uninsurable.

For more information, see:
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Number of Owners

By definition, a sole proprietorship is limited to one owner. Partnerships (general and limited) and limited liability companies must have at least two owners, and the total number of owners is unlimited. An "S" corporation may have only one owner, but it may not have more than 35. A "C" corporation has the most flexibility; it may have any number of owners.

For more information, see:
BUSINESS ENTITY PLANNING WORKSHEET
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Fringe Benefits

A "C" corporation generally can deduct the costs of group health insurance plans, pension plans, and limited amounts of life insurance. The costs of these benefits for owner/employees are deductible if certain tax regulations are followed which discourage plans that primarily benefit highly compensated employees (who are often the officers and/or owners of the business). "S" corporations, partnerships, and limited liability companies can only deduct the costs of benefits provided to non-owners. In the case of an "S" corporation, a stockholder who owns less than 2% of the company's stock is a "non-owner". A sole proprietor is even more limited in deducting these types of fringe benefits.

For more information, see:
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Other Factors

A corporation ("C" or "S") has perpetual existence, i.e., the corporation continues in existence even though the owner(s) may die. A general partnership terminates if a partner withdraws or dies, but this result can be altered through the use of a partnership agreement that provides for the continuation of the business upon the death or withdrawal of a partner. Limited partnerships and limited liability companies terminate after a term of years which is specified in the limited partnership agreement or the operating agreement of the limited liability company. A sole proprietorship terminates with the death of the sole proprietor.

A "C" corporation is allowed to select a fiscal year for its tax year, i.e., it is not required to use a December 31 year-end. All other business entities must use a calendar year-end, although there are some limited exceptions. The selection of a fiscal year may be important if the business activities are seasonal and the end of a normal business cycle occurs at a time other than December 31.

The sole proprietor is the sole owner of the business and the business ceases upon the death or disability of the owner. The business may be sold to another party either by the sole proprietor during his or her lifetime, or by the sole proprietor's legal representative upon death or disability.

A partner can assign the partner's interest in the partnership to another party. However, the receiving party cannot act as a partner unless the other partners consent. The partnership agreement may also impose other restrictions on transfers of interests.

Ownership of a corporation is represented by shares of stock which can be transferred to others. In a small or "closely held" corporation, the shares may be subject to an agreement which restricts or prohibits the transfer of the shares as a means of controlling who may own shares in the business. Although continuity of the business despite the death of a shareholder is an advantage of the corporate form, as a practical matter, in a small or "closely held" corporation, the death or withdrawal of a shareholder who is also a key employee of the corporation may result in the termination of the business of the corporation. Advance planning in the form of stock redemption agreements or buy-sell agreements is important to consider for the continuity of the corporation.

Similar to a partnership, most limited liability company (LLC) statutes require that a member cannot transfer his or her interest to another person without the consent of ALL of the other members.

For more information, see:
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Employment Documents

The employment area of the law is complex in many ways. Some of the important issues include:

- whether the worker is an employee or independent contractor.

- the impact of minimum wage/overtime laws on the payment of wages and/or commissions.

- the impact of the Americans With Disabilities Act.

It's Legal provides documents that address these issues, including an Employment Agreement, a Consulting Agreement, a Work for Hire Agreement, an Employment Confirmation Letter and an Employment Letter of Acceptance. Additionally, a Confidentiality Agreement, which may be used between companies or in an employer/employee relationship is available through It's Legal.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONFIDENTIALITY AGREEMENT
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIRMATION LETTER
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
WORK FOR HIRE AGREEMENT

Employee or Independent Contractor

Generally, an "employee" is a person who is hired by another person or business (an "employer") for a wage or fixed payment in exchange for personal services and who does not provide the services as part of an independent business. This definition can be contrasted with an "independent contractor" who is a person or entity who, as part of an independent business, becomes obligated to provide goods and/or services for a price. For example, an expert in computer systems might provide services to other businesses as a "consultant".

The IRS has very strict guidelines concerning whether a person providing services is an employee or an independent contractor. Frequently, businesses attempt to make their associations with workers "independent contractor" relationships so that they are not obligated to provide employee benefits or to withhold employee payroll taxes. However, the IRS often views such relationships as "employer/employee" relationships in order to assess payroll taxes against the employer. If one or more of the following factors apply, there is a reasonable possibility that the IRS will view the "worker/consultant/independent contractor" as an employee. In such cases it is advisable to consult a tax expert to determine whether the Employment Agreement should be used instead of the Consulting Agreement or the Work for Hire Agreement.

* The independent contractor will work only for the business (the "Company") who is hiring the independent contractor.

* The independent contractor will be paid an hourly, weekly, or monthly wage.

* The Company will control or significantly influence the independent contractor's working hours and/or work environment.

* The Company will control or significantly influence the independent contractor's work methods, and is not merely interested in the results of the independent contractor services.

* The Company furnishes tools and equipment required by the independent contractor to perform the services.

* The independent contractor is not providing the services as part of a business that is at risk as to whether it will make a profit or suffer a loss.

* The relationship of the independent contractor to the Company includes other factors that are similar to factors that characterize the relationships of employees to employers.

The existence of one of the factors by itself may not be determinative, but it will be considered along with other factors by the IRS in deciding which relationship is more dominant.

For more information, see:
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EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER

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Minimum Wage/Overtime Laws

Minimum wage or overtime laws may have an effect on compensation. The Employment Agreement and the employment letters do not address the requirements of minimum wage or overtime law. Wage payments and commission payments to employees must comply with the requirements of the Fair Labor Standards Act, a federal law that sets forth rules regarding wages, working hours, and other employer/employee matters. For example, some types of employees must be paid at least twice per month. Many states also have certain minimum wage requirements. For additional information, contact an attorney or the local office of the "wage and hour" division of the U.S. Department of Labor (or similar state agency).

For more information, see:
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Americans With Disabilities Act

Beginning on January 1, 1992, the Americans With Disabilities Act prohibits all public entities from discriminating in their employment practices. Employers must reasonably modify their policies, practices and procedures to avoid discrimination against qualified individuals with disabilities. The application of the Act may vary depending on the number of employees working for the employer.

Employers must make "reasonable accommodation" for the known mental and physical limitations of otherwise qualified applicants or employees with disabilities. "Reasonable accommodation" means any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to (i) participate in the job application process, (ii) perform the essential functions of a job, or (iii) enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. Examples include:

* Buying or modifying equipment.
* Changing the job.
* Modifying work schedules.
* Making the work place accessible.

There are exceptions if the employer can show that the accommodation would impose an "undue hardship". This term means significant difficulty or expense relative to the operation of the employer's business. If a particular accommodation results in "undue hardship", other alternatives must be considered.

The purpose of the Act is to protect qualified individuals from discrimination on the basis of a disability. Whether a particular individual is covered by the Act requires a careful analysis of whether the person is "an individual with a disability" and whether the person is "qualified."

Before any action is taken by an employer with respect to a disabled individual, an attorney should be consulted to avoid any violation of the Act or any other law which applies to disabled persons.

For more information, see:
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Commissions

"Commissions" are compensation paid to an employee (e.g., a salesperson) or an independent contractor (perhaps also a salesperson). The commission is usually an amount calculated as a percentage of the worker's production. For example, a salesperson's commission is often a percentage of the salesperson's sales volume.

For more information, see:
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Employment Agreement

The Employment Agreement is an agreement between an employer and employee that specifies the rights and obligations of each party to the agreement. Please note the following cautions:

- If the employer expects the employee to abide by the agreement, the employer must also follow the agreement.

- Do not use this document if the employee is covered by a collective bargaining agreement (i.e., an agreement negotiated between a labor union and an employer).

- Lawsuits by employees against employers with respect to employment matters are increasing. Such suits are based on employment agreements, in addition to other matters such as injuries and discrimination (e.g. age, race, sex). Many aspects of these lawsuits are ambiguous and uncertain because they are based on an oral contract--the employment terms were not made in writing. Although a written agreement will not eliminate the possibility of a lawsuit, it helps reduce the possibility because it reduces uncertainty.

- Employment laws vary from state to state and change as courts interpret the law through court decisions. This program will help clarify the employment relationship by presenting the typical issues. An attorney should be consulted regarding any unique issues not addressed by this program.

The Employment Agreement should be signed by both parties and becomes effective as of the date inserted at the beginning of the Agreement.

For more information, see:
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Employment Confidentiality

The Employment Agreement offers a confidentiality paragraph that obligates the employee to protect and not disclose the employer's proprietary or confidential information. "Confidential information" is information that is unique, and for which there would be harm if it was disclosed. The confidentiality paragraph includes an option that specifies the employer's rights to take action with respect to actual or potential disclosures. Another option allows for the continuation of the confidentiality provisions after termination of employment. Court decisions vary from state to state, and in some cases, may impose a reasonable time limit regarding the time period for which the employer's information must be kept confidential. The confidentiality limitations should be reasonable in light of state law requirements and the needs and practices of the employer's business and industry.

For more information, see:
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Termination of Employment

The termination paragraph of the Employment Agreement specifies the amount of notice that must be given if either party wishes to terminate the agreement. In addition, the amount of compensation to which the employee will be entitled (if terminated) can be stated. A termination made by an employer should be conducted under the advice of an attorney familiar with particular facts of the case. A termination that is handled inappropriately might provide the basis for a discrimination or other employment lawsuit.

For more information, see:
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Non-Compete Agreement

The Employment Agreement, Consulting Agreement, and Work for Hire Agreement offer "non-compete agreement" options that provide some protection against the possibility that the knowledge gained by the employee (or consultant) regarding the employer (or the company hiring the consultant) will not be used in the future to compete with the employer (or the company). This provision is only enforceable for a "reasonable" period of time and in a "reasonable" geographical area. A reasonable period of time is usually limited to two to five years. A reasonable geographical area depends significantly on the geographical area in which the employer (or company) operates. An attorney should be consulted if a long period of time or a broad geographical area will be included in the non-compete agreement.

For more information, see:
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Employment Confirmation Letter

The Employment Confirmation Letter should be used by an employer who has verbally discussed the terms and conditions of employment with the potential employee and wants to confirm that discussion in writing. The employer should confirm what was said immediately after the final interview and prior to the time that the employee accepts the job offer. Wage payments to employees must comply with minimum wage/overtime laws.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Letter of Acceptance

The Letter of Acceptance (i) confirms the employee's understanding regarding the terms and conditions of the employer's oral offer of employment and (ii) accepts the offer of employment. This letter, which specifies the rate of compensation, vacation time, sick/personal days, benefits, and reimbursement for expenses, helps reduce the possibility of a misunderstanding.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Consulting Agreement

A Consulting Agreement is a document under which a consultant (someone who gives expert or professional advice) agrees to provide professional or consulting services. Under this agreement, the "consultant" is an independent contractor with respect to the "company", and not an employee of the "company". This document allows the user to substitute any term for the term "consultant", and thus, this document can be adapted to many other situations that might involve an independent contractor.

The Consulting Agreement should be signed by both parties and becomes effective as of the date inserted at the beginning of the Agreement.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Payment to Consultant

It is not unusual for a consultant, an independent contractor, or a person working under a Work for Hire Agreement to provide services based on an hourly charge. However, if payment (based on the hourly charge) is made weekly or biweekly, the IRS may view such an arrangement as indicating an employer/employee relationship. It is recommended that the "Warning About IRS Guidelines" section of this Guide be reviewed in detail.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Intellectual Property

The Consulting Agreement includes an optional paragraph that provides protection to the Company with respect to copyrights, patents, inventions, and other intellectual property. Such property could include novels, sound recordings, a new type of mousetrap, or a cure for a disease.

This paragraph allows for the possibility that the Consultant already has rights to certain intellectual property that will remain with the Consultant. With respect to intellectual property developed during the term of the agreement, this paragraph allows for the allocation of the rights to (i) the Company, (ii) the Consultant, or (iii) the Consultant, with the right of the Company to use the property.

The Work for Hire Agreement includes a similar paragraph which is entitled "Work Product Ownership". This paragraph simply provides that the Company will be the owner of any ideas or products that are developed through the efforts of the Service Provider.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Consultant Confidentiality

The Consulting Agreement includes an optional paragraph that obligates the Consultant (or independent contractor) to protect and not disclose the Company's proprietary or confidential information. "Confidential information" is information that is unique, and for which there would be harm if it was disclosed. For more information regarding confidential information, see the "Employment Confidentiality" section of this Guide.

The confidentiality provisions of the Consulting Agreement permit the user to specify whether the Consultant will be allowed to provide services to other parties while providing services to the Company. Two options are presented. First, the Consultant can be barred from working for other parties during the term of the agreement. However, this type of "bar" is a factor that the IRS uses in determining whether the Consultant/Company relationship may be an employment relationship rather than an independent contractor relationship. For more information, see the "Warning About IRS Guidelines" section of this Guide. Second, the Consultant is permitted to work for other parties, with an admonishment to abide by the duty to protect confidential information.

The Work for Hire Agreement includes a similar but less detailed provision that simply obligates the Service Provider to protect the Company's confidential information. This provision also includes an optional sentence that requires the Service Provider to return the Company's records.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT
WORK FOR HIRE AGREEMENT

Work for Hire Agreement

The Work for Hire Agreement is a document under which a "Service Provider" contracts to provide services for a "Company". Under this agreement, the Service Provider is an independent contractor with respect to the Company, and not an employee of the Company. This Agreement should not be used if the Service Provider is really an employee of the Company. In many respects, the Work for Hire Agreement is simply a short-form version of the Consulting Agreement. The Work for Hire Agreement should be signed by both parties and becomes effective as of the date inserted at the beginning of the Agreement.

For more information, see:
AMERICANS WITH DISABILITIES ACT
COMMISSIONS
CONSULTANT CONFIDENTIALITY
CONSULTING AGREEMENT
EMPLOYEE OR INDEPENDENT CONTRACTOR
EMPLOYMENT AGREEMENT
EMPLOYMENT CONFIDENTIALITY
EMPLOYMENT CONFIRMATION LETTER
EMPLOYMENT DOCUMENTS
INTELLECTUAL PROPERTY
LETTER OF ACCEPTANCE
MINIMUM WAGE/OVERTIME LAWS
NON-COMPETE AGREEMENT
PAYMENT TO CONSULTANT
TERMINATION OF EMPLOYMENT

Confidentiality Agreement

A Confidentiality Agreement is an agreement under which a party ("Recipient") agrees to maintain confidentiality regarding proprietary information ("Confidential Information") that it receives from another party ("Information Owner"). This type of agreement may be useful in a variety of contexts. For example, two companies might choose to share information for the purpose of determining whether the company with marketing expertise could help a manufacturing company better market its products. In such a situation, the manufacturing company would probably be sharing product and customer information with the marketing company and would want to protect this information from disclosure by the marketing company to third parties.

As an example, the Confidentiality Agreement might state the relationship between the parties as follows:

> Example: Information Owner is engaged in the business of manufacturing computer widgets. Recipient is a marketing firm that specializes in marketing computer products. Information will be disclosed to Recipient to enable the parties to determine whether Recipient could assist Information Owner with the development of a marketing plan.

Proprietary -- belonging to someone; for example, a company's customer list is proprietary information of the company.

For more information, see:
CONFIDENTIAL INFORMATION
CONSULTING AGREEMENT
EMPLOYMENT DOCUMENTS
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
LIMITED LICENSE
NO OBLIGATIONS
NO WARRANTY
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

Confidential Information

Confidential Information includes any information or material that is proprietary to the Information Owner. Specifically listing certain types of documents or information reminds the parties of what types of information may be sensitive and important to the Information Owner. It is customary for agreements to provide that information obtained from other sources regarding the Information Owner is not protected under the agreement.

For more information, see:
CONFIDENTIALITY AGREEMENT
CONSULTING AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
LIMITED LICENSE
NO OBLIGATIONS
NO WARRANTY
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

Protection of Information

The Recipient agrees to protect the Confidential Information. Sometimes this protection is enhanced by limiting the Recipient's authority to make copies, permitting the Recipient to disclose the information only to the Recipient's employees who have an important reason for needing to know the information, and by allowing the Information Owner to obtain an injunction if it appears that the Recipient may disclose the information.

For more information, see:
CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
LIMITED LICENSE
NO OBLIGATIONS
NO WARRANTY
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

Returning the Information

The Information Owner can also attempt to further protect the Confidential Information from disclosure by requiring that any written materials be returned upon request.

No Obligations

A Confidentiality Agreement's purpose is to provide protection to the Information Owner. It is not intended to create a business relationship between the Information Owner and the Recipient, or to imply that either party will be obligated to do business with the other. To avoid that possible implication, it is common to include a "no obligation" paragraph that specifies the parties' intentions to not become obligated to each other.

For more information, see:
CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
LIMITED LICENSE
NO WARRANTY
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

No Warranty

There is a possibility that the Confidential Information could contain mistakes or errors, or be based on assumptions that later prove to be incorrect. Therefore, it is common for Information Owners to include a "no warranty" provision that specifies that the Information Owner will not be responsible for any damages that the Recipient might incur from using the Confidential Information.

For more information, see:
CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
LIMITED LICENSE
NO OBLIGATIONS
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

Limited License

Generally, the Information Owner and the Recipient intend that the Confidential Information will only be used by the Recipient for the limited purpose of reviewing the information and becoming familiar with the Information Owner's business to determine whether the parties might have interest in future transactions (based on some additional agreement). A "limited license" provision makes it clear that the Recipient is not acquiring the right to use the Confidential Information on a general basis.

For more information, see:
CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS
NO OBLIGATIONS
NO WARRANTY
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

General Provisions

A Confidentiality Agreement should include provisions that (i) require amendments (changes) to the agreement to be in writing, signed by both parties, (ii) specify the state whose laws will govern and interpret disputes between the parties regarding the matters covered by the agreement, and (iii) prohibit the parties from assigning their obligations under the agreement to third parties. Generally, the state whose laws should govern the agreement should be the state of the Information Owner or the Recipient.

For more information, see:
CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT
FREE-FORM PARAGRAPH
LIMITED LICENSE
NO OBLIGATIONS
NO WARRANTY
PROTECTION OF INFORMATION
RETURNING THE INFORMATION
SIGNING CONFIDENTIALITY AGREEMENT

Free-Form Paragraph

It's Legal provides a "free-form" paragraph that allows the user to add additional provisions that may be unique to the user's specific situation.

Signing the Confidentiality Agreement

The Confidentiality Agreement should be signed by both parties, and becomes effective as of the date entered as the "effective date" in the opening paragraph of the agreement.

Estate/Personal Matters

Various documents may be created through It's Legal to assist in the management of your life while you are living as well as your estate after your death. The worksheets and documents included in It's Legal are designed to assist you in making decisions and providing information to your family and/or friends to assist in planning a funeral or memorial service. Other documents provide various options ranging from establishing a premarital agreement to identifying your assets in preparation for writing a will or trust document.

For more information, see:
ESTATE PLANNING WORKSHEET
EXECUTOR
JOINT LIVING TRUST
LIVING TRUST
MEMORIAL SERVICES
PERSONAL FACT SHEET
POUR OVER WILL
PREMARITAL AGREEMENT
PROBATE
SIMPLE WILL
TRUST FOR CHILDREN
TRUSTEE
TRUSTS
WILLS AND TRUSTS
COMPLEX WILLS AND TRUSTS

Personal Fact Sheet

This document is not a formal document. It is a worksheet to document personal data and to organize your financial information. Optional sections include a summary of assets and liabilities, a summary of insurance policies, and a free-form paragraph. The final document should be stored in a location where the person who may become responsible for your affairs would expect to find such information.

In addition to the organization of your financial matters, this document may be useful to your spouse or other family members if you become incapacitated or upon your death. It contains the type of information needed if another person is required to manage your financial affairs, such as a Conservator appointed by a court, or your Agent as designated under a Power of Attorney. Also, this document contains the type of information that a lawyer or an executor would need for the administration of an estate.

You may want to review the program before entering the data to see the types of information that the program requests. Have copies of your records available to facilitate entering the information. Also, consider the order in which you desire to enter the requested data.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
ESTATE/PERSONAL MATTERS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL INFORMATION
REAL ESTATE
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Wills/Health Care Directives/Powers of Attorney

Various legal documents specify an individual's instructions if such person is unable to act on his or her own behalf. Also, an individual may appoint someone to act as his or her agent in specified instances or upon the occurrence of specified events.

A Simple Will is a document under which a Willmaker states his or her intentions regarding the persons or entities ("beneficiaries") who will receive the Willmaker's property, and the person or entity ("Executor") who will carry out the Willmaker's wishes.

A Living Trust is a trust created by a person (known as the "Grantor") for use during that person's lifetime. Typically,the Living Trust includes provisions that provide distributions of the trust income to the Grantor during the Grantor's lifetime. After the death of the Grantor, the Living Trust has provisions that designate beneficiaries who will receive the Grantor's property, similar to a Simple Will. The Grantor generally manages the trust during the Grantor's lifetime, as the "Trustee" ; after the death of the Grantor, a Successor Trustee carries out the remaining terms of the Living Trust, much in the same manner as an Executor.

A Pour Over Will is a specialized will that is used as a supplementary document to the Living Trust. Its primary function is to "pour over" the Willmaker's remaining assets (at the Willmaker's death) into the Willmaker's Living Trust. The Pour Over Will should only be used if a Living Trust has been prepared.

A Living Will is a document under which a competent adult, prior to becoming unconscious or incompetent, declares his or her intention that life-sustaining procedures should be withheld or withdrawn under specified circumstances. The Living Will should not be confused with the Simple Will or the Living Trust. The Living Will is related to the Health Care (Durable) Power of Attorney document.

A Health Care (Durable) Power of Attorney is a document which allows an individual ("Principal") to designate another individual ("Agent") to make health care decisions for the Principal if the Principal is unconscious, incompetent or otherwise unable to make such decisions. The document may also contain wishes and desires to guide the Agent in making health care decisions for the Principal.

A Power of Attorney is a document under which a person (a "Grantor") authorizes another person or entity (an Attorney-in-Fact" or "Agent") to act on his or her behalf. The Agent will be able to handle the Grantor's affairs during a period of time when the Grantor is unavailable or unable to do so. A General Power of Attorney authorizes the Agent to act in a variety of situations. In contrast, a Special Power of Attorney authorizes an Agent to act on his or her behalf in specific situations only.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
LIVING TRUST
LIVING WILL
PERSONAL FACT SHEET
POWER OF ATTORNEY
SIMPLE WILL

Safety Deposit Box

A safety deposit box is a metal container rented by a customer in a bank in which the customer deposits important papers, securities and other valuable items. Generally, two keys are required to open the box, one retained by the bank and the other by the customer.

In the event of incapacity or death, family members will need to have access to important documents stored in the box. Therefore, it is important to identify the banks at which the deposit boxes are located and the location of the keys. If the keys are not located, a charge will be made to "drill" the safety deposit box.

Also, upon death, the safety deposit box is "sealed" and an inventory of the boxes' contents is made by bank personnel in conjunction with the Executor. Once an Executor is appointed, the executor may have access to the box upon proof of such appointment. If the box is held jointly with another individual, that individual may subsequently have access to the safety deposit box.

If no Executor or Administrator is appointed for the estate, a bank will generally allow a family member access to the safety deposit box upon the execution of an indemnity agreement. Such an agreement generally states the person taking control of the box contents will be responsible if anyone later makes a claim against the bank for releasing the box contents.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL FACT SHEET
REAL ESTATE
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Accounts/Stocks/Bonds

A complete listing of all bank, IRA, and investment accounts, as well as stocks and bonds is very helpful. This type of listing not only organizes your financial matters, it has the potential of saving your family an immense amount of time and frustration in locating this type of information. Information regarding your various retirement/profit sharing plans is also important.

Cash accounts, IRA accounts, and retirement plans should be listed at their current values. Of course, the values of these accounts will change over time, but the current value provides a "snapshot" of your current financial position.

Investment accounts, stocks and bonds should be valued at their current market value, not their original cost. However, the purchase price is required when these types of assets are sold in order to calculate the capital gain or income earned.

Many employee benefit plans, IRAs and other accounts contain beneficiary designations. A beneficiary is the person or entity entitled to receive the value of the account when the owner dies. It is important to understand that the designated beneficiary will receive the value of the account, even if this is in conflict with the terms of the owner's Will. In other words, the designation of the beneficiary takes priority over the terms of the Will.

For more information, see:
BUSINESS INTERESTS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL FACT SHEET
REAL ESTATE
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Real Estate

Real estate may be difficult to value. However, appraisals for property tax purposes, and the recent sales of similar real estate in the same area can be useful in estimating the fair market value. Refer to the deed or other document of transfer to verify exactly how the ownership (title) of the property is held. The legal description of the real estate may be obtained from a deed, real estate contract, loan documents, or other real estate records.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL FACT SHEET
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Insurance Summary

The various insurance sections will assist you in establishing and maintaining an up-to-date listing of your motor vehicle, homeowners (or renters), life, health, disability insurance, and other insurance coverages. Locate and have copies of current policy declaration pages available to assist in the entering of the appropriate data.

It is also important to review the beneficiary designations for all of your life insurance policies. A beneficiary is the person or entity entitled to receive the insurance proceeds when the owner dies. It is important to understand that the designated beneficiary will receive the insurance proceeds, even if this is in conflict with the terms of the decedent's Will. In other words, the designation of the beneficiary takes priority over the terms of the Will.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
LOANS/LIABILITIES
PERSONAL FACT SHEET
REAL ESTATE
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Business Interests

Any interest in a business other than a corporation may be listed in this section. For example, an investment in a joint venture with another person, or ownership in a sole proprietorship or partnership. Business assets, including accounts and real estate, should be listed separately from personal assets or accounts. If the business holdings are extensive, you may want to prepare a separate summary for the business itself.

For more information, see:
ACCOUNTS/STOCKS/BONDS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL FACT SHEET
REAL ESTATE
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Vehicles/Personal Property/Other Assets

A complete asset listing includes motor vehicles and items of personal property such as household furnishings, electronic equipment, appliances, collections, jewelry, and antiques. Each vehicle should be listed separately. However, personal property and household furnishings may be listed as a single item with a total estimated value. Special or unique items of personal property may be listed separately.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
INSURANCE SUMMARY
LOANS/LIABILITIES
PERSONAL FACT SHEET
REAL ESTATE
SAFETY DEPOSIT BOX
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Loans/Liabilities

A true financial picture must contain loans, debts and other liabilities. Debts should be listed at an amount equal to the current outstanding principal amount. For example, the amount of a mortgage should be the current principal balance. Credit cards should be listed at the current outstanding balance. It is not necessary to list monthly bills such as rent payments and utility bills.

For more information, see:
ACCOUNTS/STOCKS/BONDS
BUSINESS INTERESTS
INSURANCE SUMMARY
PERSONAL FACT SHEET
REAL ESTATE
SAFETY DEPOSIT BOX
VEHICLES/PERSONAL PROPERTY/OTHER ASSETS
WILLS/HEALTH CARE DIRECTIVES/POWERS OF ATTY

Memorial Services

The purpose of this document is to leave instructions regarding your desires for your final arrangements. Perhaps you have never thought about the questions presented in this program. You only have to include the provisions that you desire. And, it is appropriate for young adults to consider the matter of funeral arrangements; these are questions for everyone to think about, not just the elderly or the infirm.

A funeral or memorial service can be a moving, personal ceremony. So that you may have the kind of remembrance that you want, provide a copy of this document to your family or other appropriate person(s) and discuss your desires with them. If you do not wish to discuss your wishes with your family, at least advise your family or other appropriate person(s) regarding the location of this document.

Realistic planning may be difficult for an event that may not take place for many years, and of necessity plans must be made on a tentative basis. Circumstances may require that changes be made in your plans. If you provide guidance to your family, and yet indicate that you understand that changes may need to be made, they will feel more comfortable in making your arrangements.

If you are inclined to make prearrangements, again be aware that circumstances may necessitate changes. Specifying too many details and instructions may be counterproductive. Sometimes it is best to base the decision on the circumstances known at the time of death.

For more information, see:
AUTOPSY (MEMORIAL SERVICES)
BIOGRAPHICAL INFORMATION
CASKET/CONTAINER SELECTION
DONATION/ANATOMICAL GIFTS
ESTATE/PERSONAL MATTERS
FLOWERS/MEMORIAL FUNDS
FUNERAL HOME/DIRECTOR
MEMORIAL/FUNERAL SERVICE
NOTIFICATION
OTHER WISHES
PALLBEARERS
PERSONAL INFORMATION
PREPAID FUNERAL PLANS
PROTECTIVE FUNERAL LEGISLATION
SIGNATURE
TREATMENT OF THE BODY

Notification

A number of alternatives are available to notify individuals and institutions of a death. Many times the immediate notification of the Declarant's clergy person permits such person to assist the bereaved family and friends.

Family and close friends are telephoned immediately. If desired, the "Exhibit" form can be used to list everyone who should be notified. Or you may refer to a list or other form that contains such names, such as an address book. Newspaper announcements can be used to notify a larger number of acquaintances. Formal printed announcements, usually used by businesses to inform colleagues or clients, are sometimes sent.

In addition to family and friends, there will be others who need to be informed of the death. For example, banks, credit card companies, and organizations. The "Personal Fact Sheet" identifies important information which can be used to ascertaining who should be notified.

For more information, see:
BIOGRAPHICAL INFORMATION
FLOWERS/MEMORIAL FUNDS
MEMORIAL/FUNERAL SERVICE
MEMORIAL SERVICES
PERSONAL FACT SHEET

Funeral Home Director

You may want to discuss these funeral arrangements with your funeral director. If you want to make selections and desires known to your funeral director, the information generated by this program can assist you in that discussion. Leave a copy of your wishes with your funeral director for future reference.

Some funeral homes and memorial parks offer prepaid funeral plans. If you make prearrangements, choose a reliable funeral director - one whose business will still be in existence at the time of your death. Also, you should be sure that your funds are paid into a state-regulated trust fund. This assures that the funds are available when they are needed. Verify how this fund is handled and what happens to your prepayment if the funeral director's business is sold or the director goes out of business.

If such a plan is chosen, you should be sure to attach proof of such purchase to this document. A description of pre-need arrangements will be necessary to assure that your loved ones know you have already paid for certain items. As you make your plans, find out if adjustments can be made at the time of your death. Some pre-need plans permit you to transfer the arrangements from one funeral home/cemetery to another. You should also ascertain if a pre-purchased lot can be transferred or sold if circumstances change.

For more information, see:
MEMORIAL SERVICES
PROTECTIVE FUNERAL LEGISLATION

Donation/Anatomical Gifts

Making a gift of your body can be done by several methods: a bequest of particular organs for transplantation, donation of all organs and tissues, or the donation of the entire body to a medical school. Alternative disposition preferences should also be made if the donation cannot be completed for any reason.

Donor cards are available from local agencies such as hospitals, the local office of the National Kidney Foundation or a community eye bank. Some states provide organ donation check-off on driver's licenses. Also inform family members or close friends to assure fulfillment of your desires. To donate the whole body, the school or hospital to which such donation will be made should be contacted. The institution will advise of their particular procedure and can provide the necessary forms.

The dissection of human bodies is an invaluable part of medical school training and scientific research. A donor form may indicate whether the Declarant prefers his/her body be used for anatomy classes or for scientific research. Bodies generally are rejected if they are decomposed, obese, emaciated, amputated, infectious, mutilated, have been recently operated on, autopsied, or are otherwise unfit. With the exception of corneas, organ donations cannot be made if the body is to be donated to science.

The cost of donating a body to medical science may include a minimal fee for transportation of the body. Some schools will pick up the body. Donation of a body to science is the most economical disposition of a body. A special embalming process is required. The body is kept from six months to two years. Upon completion of medical studies the remains are generally cremated. Some schools will return the body or cremains, sometime charging for any costs incurred.

Donations can be made of a variety or organs: liver, heart, kidneys, bones and tissue (including cartilage, marrow, skin, eardrums, and corneas). Human tissues include other eye parts, blood vessels, ligaments, tendons and other connective tissue, pituitary glands, the dura mater and other brain tissues, middle ears, ear bones, heart valves, and other organ subparts.

Two physicians with no interest in the transplant must find the patient "utterly and irretrievably deceased." After being declared brain dead, the organ donor is placed on a respirator until the organs are removed.

For more information, see:
AUTOPSY (MEMORIAL SERVICES)
CASKET/CONTAINER SELECTION
MEMORIAL SERVICES
TREATMENT OF THE BODY

Treatment of the Body

This section concerns the selection of a final resting place for the body or remains. Survivors can visit this place to mourn or reflect in a quiet, contemplative setting. Burial plots may be purchased from cemeteries, churches, memorial parks, cooperative groups as well as governmental bodies. Above ground burial or entombment is also an option. A mausoleum tends to serve not only as a burial place, but also as a monument to the deceased individual or family.

Cremation is the reduction of the body to minerals through intense heat. The ashes and bone fragments that remain after cremation are called "cremains." These cremains are placed in an urn or other container for burial, storage or scattering. Most states allow cremains to be scattered if the bone fragments in the cremains have been pulverized. Ask a funeral director or crematorium about the local rules.

Cremains may also be placed in a columbarium, a structure adorned with stained glass windows and other aesthetic embellishments, containing small chambers for cremated remains. The door behind which an urn is placed may be marked with a bronze plaque bearing the name of the deceased.

Embalming involves injecting a dead body with chemicals to retard decay. Routine embalming is generally not required by state law. However, death from a communicable/contagious diseases or transportation by a common carrier requires embalming in some states. The type of embalming used to delay funeral arrangements for several days does not preserve a body much beyond that time.

Funeral providers are required by the Federal Trade Commission Funeral Rule to provide information about embalming so that a consumer can make an informed decision on whether to purchase this service. The funeral provider must:

1. Disclose in writing, that except in certain special cases, embalming is not required by law.

2. Not falsely state that embalming is required by law.

3. Not represent that embalming is required for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation, and with a closed casket when State or local law does not require embalming.

4. Disclose that you usually have the right to choose an arrangement that does not require embalming such as direct cremation or immediate burial.

5. Disclose that certain funeral arrangements, such as a funeral with viewing, may make embalming a necessity.

6. Not charge for embalming if it has not been authorized and it is not required by state law.

7. Provide a written explanation of the reason for embalming where a charge has been imposed.

For more information, see:
CASKET/CONTAINER SELECTION
DONATION/ANATOMICAL GIFTS
MEMORIAL SERVICES
PROTECTIVE FUNERAL LEGISLATION

Memorial Funeral Service

Funeral ceremonies are for those who survive the death, and this should be taken into consideration as plans are made. Visitation with a family and friends and viewing the body is an opportunity to accept the finality of death, pay last respects and say good-bye. If visitation is chosen, embalming is generally required. A service, whether or not the body is present, offers the opportunity for family, friends, neighbors and associates to gather and support the bereaved and each other.

This simple gathering is one of the most important psychological and emotional needs that is satisfied by the funeral. It is the community's way of letting others know that despite the loss of a loved one, they do not have to face the loss alone. Psychologically, the funeral is healthy for the immediate family and closest friends. The activities associated with the funeral effectively illustrate for all the reality of death and provide a coping mechanism.

The type of memorial service planned can vary greatly and is a matter of personal taste. Music, prayer, remarks, songs reflect traditional procedure. A series of short talks by friends and relatives of the deceased may be comforting. The Declarant may want to indicate preferences for these items, such as favorite musical selections, scriptures or other readings, and preferred speakers.

For more information, see:
FLOWERS/MEMORIAL FUNDS
MEMORIAL SERVICES
OTHER WISHES
PALLBEARERS
PROTECTIVE FUNERAL LEGISLATION
TREATMENT OF THE BODY

Flowers/Memorial Funds

Flowers may provide comfort to the survivors. Flowers are an integral part of a traditional memorial service from the visitation, memorial service, and to the final resting place. Some people prefer that the money otherwise spent on flowers be contributed to a particular charity, church or nonprofit organization. The names of such organizations can be printed in the death notice.

For more information, see:
MEMORIAL/FUNERAL SERVICE
MEMORIAL SERVICES
NOTIFICATION
PROTECTIVE FUNERAL LEGISLATION

Casket Container Selection

Despite commonly accepted ideas that the material of the casket will determine the price, there is great variety of prices within each of the various types of materials. It is rather difficult to specify a type of casket without actually viewing the caskets. The appearance of the casket, and its sealing capabilities are the characteristics generally considered in making a purchase.

Funeral providers are prohibited from representing that funeral goods or services will delay the natural decomposition of human remains for a long or indefinite time. For example, funeral providers may not claim embalming or a particular type of casket will indefinitely preserve the deceased's body. Also a funeral provider may not represent that items have protective features or will protect the body from water, dirt or other gravesite substances unless the claim can be substantiated.

Some manufacturers test the sealing capabilities of their caskets and outer burial containers and provide a written warranty evidencing these characteristics. Although it may seem highly unlikely that anyone would ever make a claim on a casket warranty, such a warranty may be an indication of the quality of the product. This written warranty is made by the manufacturer, and is made available by the funeral provider.

The Federal Trade Commission Funeral Rule prohibits a funeral provider from representing that state or local laws or particular cemeteries require outer burial containers if that is not the case. Also, the provider must make the following disclosure:

> In most areas of the country, no State or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

A burial vault is a large tank, usually concrete but sometimes metal or fiberglass, which is lowered by machine into a grave-site excavation; after the coffin is placed inside, a lid is added. There is no significant effect on body preservation. A grave liner may be sufficient and less expensive.

For direct cremation a rigid combustible container is required. Direct cremation is the cremation of the body without a viewing or other ceremony at which the body is present. Rosewood, mahogany, pine or cloth-covered caskets are suitable for cremation. Also, the funeral provider may not state that the law requires a casket for direct cremation, and is required to offer an inexpensive alternate container. An alternate container is a non-metal receptacle, without ornamentation or affixed interior lining, which is made of cardboard, pressed-wood, canvas, or other combustible materials.

For more information, see:
MEMORIAL SERVICES
OTHER WISHES
PROTECTIVE FUNERAL LEGISLATION
TREATMENT OF THE BODY

Pallbearers

Many funeral homes will provide personnel to carry the casket from the chapel or funeral home to the hearse and from the hearse to the grave site or crematory. There may be an extra charge for this service. A designation of pallbearers from relatives and friends is a recognition of close friendship to the decedent. In some locations, such as New York City, paid professional pallbearers are required by the pallbearers union unless you can obtain a waiver.

For more information, see:
MEMORIAL/FUNERAL SERVICE
MEMORIAL SERVICES
OTHER WISHES
PROTECTIVE FUNERAL LEGISLATION

Other Wishes

In this section, the Declarant may indicate whether or not he/she desires the scheduling of visitation hours, a marker, or any other items. For example, the Declarant may want to specify burial attire. The Declarant may also state which newspapers should be contacted to publish an obituary.

Memorial stones and statues may not be allowed in some cemeteries. There may also be restrictions on personal memorials, such as the placement of flowers, urns, vases or the lighting of candles at graveside. A cemetery should provide printed information describing their decoration policy and any other restrictions.

The federal government will provide a free bronze or granite marker for a deceased veteran. The local Veteran's Administration office or funeral director will have information on how to obtain the veteran's marker.

For more information, see:
FLOWERS/MEMORIAL FUNDS
MEMORIAL FUNERAL SERVICE
MEMORIAL SERVICES
PALLBEARERS

Prepaid Funeral Plans

These are contracts which outline an individual's plan for burial. These plans may include a variety of options but generally identify the casket, burial vault or other items to be included in the funeral arrangements. These plans allow for prepayment of the casket and other items that an individual specifies or may allow more generally for a specific amount of money to be spent for a funeral. In some instances, prepaid plans may be designated as a Certificate of Deposit or another type of restrictive account which names the funeral home as the beneficiary of the account. These plans may be revocable or irrevocable.

For more information, see:
CASKET/CONTAINER SELECTION
FLOWERS/MEMORIAL FUNDS
MEMORIAL FUNERAL SERVICE
MEMORIAL SERVICES
PROTECTIVE FUNERAL LEGISLATION

Protective Funeral Legislation

Most state regulatory bodies supervise funeral providers and some states have protective legislation for consumers. In addition, the Federal Trade Commission Funeral Rule requires that certain information be provided to consumers in a clear and conspicuous manner. This rule applies to pre-need as well as arrangements made at the time of death.

1. You can obtain the cost of individual items by telephone in order to compare prices among funeral providers.

2. When you inquire about funeral arrangements in person, the funeral home is required to give you a written price list of the goods and services offered for sale. Some funeral homes wait until you ask for this list even though federal law requires that it be provided at the beginning of the meeting. Do not hesitate to request a price list.

   This list must include at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations. This price list will state if professional services for arranging and supervising a funeral are not included in the prices. The price list also provides disclosures regarding embalming, cash advance sales (such as newspaper notices or flowers), caskets for cremation and required purchases.

3. You may purchase individual items or a package of goods and services.

4. When inquiring about a casket or alternate container, or an outer burial container, the funeral provider must supply a list or a use a notebook, brochure or chart that describes all the available selections, their prices, and the effective date of the price list.

5. The funeral provider must give you an itemized statement containing the total cost of the goods and services selected, the prices for each, including itemized cash advance items (or a good faith estimate with actual charges provided before the final bill is paid). This statement will also disclose any legal cemetery or crematory requirements that necessitate the purchase of any specific good or service. You can then decide if you want to add or delete items.

The Federal Trade Commission Funeral Rule requires that funeral providers disclose whether they charge a fee for providing a "cash advance item." In other words, if the funeral provider pays for any item on your behalf, and adds a service fee or receives a refund, discount or rebate from the supplier, this must be disclosed. Examples of cash advance items are: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers, musicians or singers; nurses; obituary notices; gratuities and death certificates. If the price of a cash advance item is not known at the time arrangements are made, a good faith estimate must be included in the itemized statement of goods and services and the actual charges must be provided before the final bill is paid.

It is illegal for a funeral provider to require certain additional items in connection with the purchase of any item except as required by a cemetery, crematory or by law. The funeral provider must not falsely represent that items are required. If legal or other requirements necessitate the purchase of items you did not specifically request, the funeral provider must disclose in the Statement of Goods and Services Selected the specific requirement necessitating the purchase of the item.

If you have questions about the laws of your state, you may contact the licensing board that regulates the funeral industry in your state. If you have a problem concerning funeral matters, first attempt to resolve it

with your funeral director. If you are dissatisfied, contact your local consumer protection agency or the following organizations:

Conference of Funeral Service Examining Boards
520 East Van Trees Street
P.O. Box 497
Washington, Indiana 47501
Telephone: (812) 254-7887

ThanaCAP
135 West Wells Street, Suite 600
Milwaukee, WI 53203
Telephone: (414)276-9788

For more information, see:
CASKET/CONTAINER SELECTION
FLOWERS/MEMORIAL FUNDS
MEMORIAL/FUNERAL SERVICE
MEMORIAL SERVICES
PREPAID FUNERAL PLANS

Signature

This document is not a legally binding document. Rather it is a set of instructions indicating your preferences for the guidance of those making your final arrangements. By necessity, the circumstances at the time of death may require modification to these instructions.

After your plans have been made, it is important to communicate them to those who will survive you. You may discuss your plans in detail, or just let your loved ones know the location of this document. A listing of your personal property, assets and liabilities, and the location of important papers is also useful for your family. The "Personal Fact Sheet" may be used to summarize your financial affairs.

For more information, see:
MEMORIAL FUNERAL SERVICE
MEMORIAL SERVICES
OTHER WISHES
PERSONAL FACT SHEET

Biographical Information

Public announcement of a death can be accomplished by publications in local newspapers. A death notice is a paid announcement listing pertinent information. An obituary is a news story printed in the newspaper, generally at no cost. Sometimes a newspaper will print basic information at no charge, and then charge for anything in addition to the basic information.

These notices must be quickly prepared to meet newspaper deadlines. To assist family or other appropriate person(s) in writing an obituary, many types of information will be required. The program provides for the type of information that is most generally requested. Additional information may be added as desired. Some people prefer to prepare their own obituaries. This can be completed using the "Exhibit" document. The information should then be attached to the Memorial Services document.

For more information, see:
MEMORIAL SERVICES
NOTIFICATION

Personal Information

To assist your family or other appropriate person(s) in handling your estate, many types of information will be required whether or not your estate is probated. Also it is a good idea to keep a list of all the property you own outright or have an interest in, as well as stocks and bonds, accounts, savings and checking, and the financial institutions where they are located. It is also important to list the liabilities you have, such as bank loans, mortgages, personal loans, etc., for these will also be important in settling your financial affairs. An option is presented within the "Memorial Services" document for you to prepare a list of biographical information. A copy of financial and personal information should be kept with your Memorial Plans. You should inform your family or other appropriate person(s) of the location of this information. It's Legal offers a "Personal Fact Sheet" document to assist with the preparation of your personal information.

Such a comprehensive personal-planning effort on your part has several benefits:

A. It gives you an opportunity to review your own financial situation;

B. It simplifies arrangements for your survivors who must handle them;

C. It saves time and energy and may save money that your survivors may have to otherwise spend to settle matters after your death;

D. It can give you a sense of pride in having your affairs in order.

This planning effort, however, is not a substitute for a Will. This information, though, is helpful in addition to your Will. Parson's "It's Legal" program provides a "Simple Will" for an estate less than $450,000. If your matters are more complex, the "Estate Planning Worksheet" can identify the questions that you should review before seeing an attorney to prepare your Will. (NOTE: An explanation of the "Estate Planning Worksheet", a "Simple Will" and other information related to estate planning can be found under the Wills and Trusts section of the Guide).

For more information, see:
MEMORIAL SERVICES
PERSONAL FACT SHEET
WILLS AND TRUSTS

Wills and Trusts

There are many types of wills and trusts. It's Legal provides you with the following:

- Simple Will (includes an optional children's trust),
- Living Trust,
- Pour Over Will,
- Estate Planning Worksheet,
- Living Will.

A Simple Will is a document under which a Willmaker states his or her intentions regarding the persons or entities ("beneficiaries") who will receive the Willmaker's property, the person or entity ("executor") who will carry out the Willmaker's wishes, and if necessary, the person ("guardian") who will care for the Willmaker's minor children.

A Living Trust is a trust created by a person (known as the "Grantor") for use during that person's lifetime. Typically, the Living Trust includes provisions that provide distributions of the income to the Grantor during the Grantor's lifetime. After the death of the Grantor, the Living Trust has provisions that designate beneficiaries who will receive the Grantor's property, much in the same manner as a Simple Will. The Grantor generally manages the trust during the Grantor's lifetime, as the "Trustee" ; after the death of the Grantor, a successor Trustee carries out the remaining terms of the Living Trust, much in the same manner as an Executor.

A Pour Over Will is a specialized Simple Will that is used as a supplementary document to the Living Trust. It's primary function is to "pour over" the Willmaker's remaining assets (at the Willmaker's death) into the Willmaker's Living Trust. The Pour Over Will should only be used if a Living Trust has been prepared.

The Estate Planning Worksheet is not a formal document. It is a worksheet to be used as a planning document in connection with the preparation of a Simple Will. It can also be used to prepare for It's Legal's Living Trust and Pour Over Will. Finally, it requests information that an attorney would use during an estate planning interview, and therefore, it can also be used to prepare for situations that require complex estate planning techniques that are not included in It's Legal's Simple Will and Living Trust.

A Living Will is a document under which a competent adult (a "Declarant"), prior to becoming unconscious or incompetent, declares his or her intention that life-sustaining procedures should be withheld or withdrawn under specified circumstances. The Living Will should not be confused with the Simple Will, Living Trust or Pour Over Will; the Living Trust is more related to the Health Care (Durable) Power of Attorney document.

In addition to wills, trusts and estate planning worksheet, It's Legal provides a "Personal Fact Sheet" which is useful in organizing and summarizing personal data and financial information. (NOTE: An explanation of personal information useful in managing personal and financial matters resulting from disability or death can be found under the Personal Fact Sheet section of the Guide).

For more information, see:
COMPLEX WILLS AND TRUSTS
ESTATE/PERSONAL MATTERS
ESTATE PLANNING WORKSHEET
HEALTH CARE POWER OF ATTORNEY

LIVING TRUST
LIVING WILL
PERSONAL FACT SHEET
POUR OVER WILL
SIMPLE WILL

Simple Will

A Simple Will is a document under which a Willmaker states his or her intentions regarding the persons or entities ("beneficiaries") who will receive the Willmaker's property, the person or entity ("executor") who will carry out the Willmaker's wishes, and if necessary, the person ("guardian") who will care for the Willmaker's minor children.

NOTE: It's Legal provides an appropriate Will for most people. However, if the estate is larger than $450,000, it may be desirable to use more complex estate planning techniques that are not provided by this program. For such cases, It's Legal's Estate Planning Worksheet and Simple Will can be used to prepare for an office conference with an attorney who can assist you with the preparation of a more complex will.

For more information, see:
ESTATE/PERSONAL MATTERS
ESTATE PLANNING WORKSHEET
JOINT LIVING TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST
RESIDUARY ESTATE
SIGNING THE WILL
SPECIFIC BEQUESTS
SPOUSES
TANGIBLE PERSONAL PROPERTY
TRUST FOR CHILDREN
WILLS AND TRUSTS

Signing the Will

A. Signing the will. The Simple Will and the Pour Over Will should be signed by the Willmaker in the presence of three witnesses and a notary public.

1. Notice to the person who signs this Simple Will:

a. This will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it does not normally apply to proceeds of life insurance on your life or your retirement plan benefits.

b. This will is not designed to reduce taxes. You should discuss the tax results of your decisions with a competent tax advisor.

c. If you chose the option of creating a trust with this document, you should be sure that you intended to create such a trust.

2. Validity. The Will is not valid unless it is signed by the Willmaker, if able. If the Willmaker is unable to sign due to physical disability, another person may be able to sign on behalf of the Willmaker, in the Willmaker's presence, and at the express direction of the Willmaker. If you have any questions regarding the possibility of someone signing on behalf of the Willmaker, a lawyer should be contacted.

3. Witnesses.

a. The witnesses to this will should not be people who may receive property under this will, and they must be sixteen years of age or older.

b. All of the witnesses must watch the Willmaker sign this will. The Willmaker should verbally declare that the instrument (the document) is his/her Last Will and Testament.

c. Each witness must sign his or her name with the Willmaker and the other witnesses present. The witnesses should be satisfied that the Willmaker willingly signed the document as his/her free and voluntary act, and that the Willmaker was of full age and sound mind.

d. Many states require only two witnesses, but the signature of a third witness provides some protection against the possibility that one of the witness' signature will be invalid for some reason. For example, a person should not be a witness if that person is a beneficiary under the will.

4. Self-proving Affidavit. In most cases, this document should be executed and attached to the end of the will. Signing the will and this affidavit in the presence of a notary public provides evidence that the Willmaker and the witnesses actually signed their names in the presence of each other on the date of the will. This evidence is helpful in many states at the time that the will is admitted to probate -- the process of proving the will and administering the Willmaker's estate. In many states the signature of the notary public on the affidavit is not a required step, and in California, notary publics are requested not to provide this service. In such cases, it is permissible not to use the affidavit. However, it is recommended that the affidavit be used unless state law requests that the notary public not sign.

5. Dates. Fill in the date wherever requested, using the date on which the actual signing takes place. This requirement could become essential to the validity of the will (for example, if this will revokes an earlier will).

6. Number of pages. Indicate the number of pages in the will, including the page(s) on which the witness signature lines appear, but excluding the page with the affidavit.

B. Safekeeping the will. The original copy of the will should be kept in a secure location such as a safety deposit box at your bank. A second copy should be kept in your files at home. In any event, be sure that at least one copy is placed in a fireproof place. You may wish to provide a copy to your attorney, or possibly to the person that you have named as executor or trustee. However, before distributing such copies, you should consider that it may become awkward to retrieve them later, should you decide to modify your will and/or change your designation of executor or trustee.

C. Changing the will. In many states you cannot change, delete, or add words to the face of this will; if you do, the change or the deleted or added words may be disregarded. You may be able to amend this will by executing a "codicil" to the will, but this method is not recommended. When changes are desired, it is recommended that you revoke this will by making a new will which expressly revokes the former will. For example, if you marry or divorce after you sign this will, you should make and sign a new will.

For more information, see:
POUR OVER WILL
SIMPLE WILL
WILLS AND TRUSTS

Spouses

Many states "protect" spouses with laws that permit a spouse to receive a portion of the estate even though the Will does not provide for the spouse. If the intent in the Will being created by It's Legal is to "disinherit" the Willmaker's spouse, you may want to consult with an attorney regarding the legal rights of the Willmaker's spouse to receive property from the estate, despite the provisions of the Will. Disinheriting means to deprive another person (an heir) of property that would have been distributed to that person under the laws of intestacy. An agreement between the Willmaker and the spouse, signed prior to their marriage, may permit the spouse to not be included in the Will.

A similar issue is raised if a Grantor/Willmaker plans to not include a spouse in either the Living Trust or the Pour Over Will. If these documents are being used as an alternative to the Simple Will, and if the spouse will not be included, it is advisable to consult with an attorney.

For more information, see:
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
SIMPLE WILL
WILLS AND TRUSTS

Specific Bequests

A specific bequest is a gift (bequest) of a specific item or asset to a named person or entity. For example, a wedding ring, $1,000, an antique, or a car. The gift can be made in a Will, a Living Trust or a Joint Living Trust. Some persons (Willmakers or Grantors) have specific items that they want to give to a specific person (or entity). For example, a mother may want to make sure that her jewelry goes to her daughter. Or grandparents may decide that they would like to give $1,000 to each of their five grandchildren. Specific bequests are usually made at the beginning of the Will, followed by other provisions that provide for the distribution of the other assets of the estate.

A specific bequest may be an item of tangible personal property (e.g., a diamond ring), an item of intangible personal property (e.g., 50 shares of IBM stock), or real property (e.g., a personal residence).

For more information, see:
JOINT LIVING TRUST
JOINT PROPERTY
LIVING TRUST
RESIDUARY ESTATE
SIMPLE WILL
TANGIBLE PERSONAL PROPERTY

Tangible Personal Property

Tangible personal property includes jewelry, furniture, cars, and other items that have a physical essence. Intangible personal property includes cash accounts, stocks, bonds, and other similar assets. A coin is tangible personal property, while 25 cents in a checking account is intangible personal property.

Tangible personal property can be given in a Will, a Living Trust or a Joint Living Trust. Some persons (Willmakers and Grantors) want to make sure that their tangible personal property is given to a specific person or divided among several specific people. It's Legal allows the user to specifically give tangible personal property to specific beneficiaries, after the user has first decided whether to make specific bequests. It is not required that the user include specific bequests, but if the user does so, the Simple Will, Living Trust or Joint Living Trust will then exclude any specific bequests of tangible personal property from the provisions that later distribute the tangible personal property. For example, if a Willmaker makes a specific bequest of a "1957 Chevy" to "Uncle Stan", the language of the Simple Will automatically excludes the "1957 Chevy" from the Willmaker's later provision that distributes the tangible personal property to "Aunt Angela". This language is necessary because the "1957 Chevy" would otherwise be distributed as a specific bequest to one person and as part of the tangible personal property to a different beneficiary.

If the terms of the Simple Will (or Living Trust or Joint Living Trust) provide that the tangible personal property will be distributed to more than one beneficiary, the Executor (or the Trustee in the case of a Living Trust or Joint Living Trust) are responsible to determine how the property should be divided. In most cases, the Executor (or Trustee) will carry out this task by carefully considering the wishes of the beneficiaries who will be receiving the property.

For more information, see:
JOINT LIVING TRUST
JOINT PROPERTY
LIVING TRUST
RESIDUARY ESTATE
SIMPLE WILL

Residuary Estate

The residuary estate is a term in the Simple Will that is similar to the term "remaining trust assets" that is used in both the Living Trust and the Joint Living Trust. The residuary estate includes the Willmaker's assets that remain after making distributions of specific bequests and tangible personal property. In most estates (or Living Trusts or Joint Living Trusts) the residuary estate includes most of the assets. If the optional specific bequests and tangible personal property provisions are not included, the residuary estate includes all of the remaining assets of the Willmaker or Grantor.

It's Legal allows the user to distribute the residuary estate by selecting from a variety of alternatives. The user can opt to distribute the residuary assets to the Willmaker's spouse or children. If the Willmaker has minor children, the user can select a Trust for Children. The user also has the options of distributing the residuary estate to (i) a "named beneficiary" who may be a person (or a charity) other than the spouse or a child, or (ii) several beneficiaries either in "equal shares" or in shares that are stated as "percentages". This latter option would allow the Willmaker to give 97% of his/her residuary estate to a trust for his/her children and 3% to a favorite charity.

It's Legal also provides multiple opportunities to provide for "contingent" beneficiaries, beneficiaries who will receive distributions of assets if the first choice does not survive the Willmaker (or Grantor in the case of a Living Trust or Joint Living Trust). For example, a user can give all of the residuary estate to a spouse as the first choice, but if the spouse does not survive the death of the Willmaker, use (i) the "children" option to give the residuary estate to the children in equal share, (ii) the "percentages" option to give 40% of the residuary estate to one child and 60% to a child with unique needs, (iii) the "equal shares" alternative of the "percentages" option to give the residuary estate to three brothers, or (iv) the "named beneficiary" option to give the residuary estate to an elderly parent (maybe the Willmaker has no children). This example does not illustrate all of the many options.

In most cases, the user will have the opportunity to provide for several layers of contingent beneficiaries. If the user does not want to use the many options, It's Legal provides the user with an easy out--choose a primary beneficiary, and then select the "heirs" option to provide that the Willmaker's heirs will be the contingent beneficiary. If the "heirs" option is selected, no further alternatives will be presented.

For more information, see:
JOINT LIVING TRUST
JOINT PROPERTY
LIVING TRUST
SIMPLE WILL
SPECIFIC BEQUESTS
SPOUSES
TANGIBLE PERSONAL PROPERTY
TRUST FOR CHILDREN

Joint Property

Many states permit an individual to own property with another individual in a manner known as "joint with rights of survivorship." In such a case, when the first joint owner dies, the property passes to the second joint owner, irrespective of the first owner's efforts to bequeath the property through his or her will to a third person.

In many cases this never becomes a problem because the joint property is owned between spouses, and the wills of the spouses provide that the property owned by the spouses will be bequeathed to the survivor of them; thus, there is no conflict between the ownership of the joint property and the provisions of the wills. If the Willmaker owns property with another person "jointly with rights of survivorship" but wants the property to pass to a third person under the Will, an attorney should be consulted.

For more information, see:
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
SIMPLE WILL
SPECIFIC BEQUESTS
SPOUSES
WILLS AND TRUSTS

Life Insurance/Annuity/Pension Plan Designations

Life insurance, annuity, and pension plan agreements (and similar agreements) are contracts that permit an individual to name those who will receive the proceeds of such agreements either as primary or secondary beneficiaries. The designations filed with the insurance company control the distribution of the proceeds of these contracts, not the Willmaker's Simple Will, Living Trust, Joint Living Trust or Pour Over Will. Similarly, IRA accounts often allow the owner to designate a beneficiary who will receive the proceeds of the account upon the death of the owner of the account. Thus, after any drafting of a Simple Will, Living Trust, or Joint Living Trust, the Grantor/Willmaker should review the agreements to make sure that the designations of such agreements correspond to the wishes of the Grantor/Willmaker as set forth in the Simple Will, Living Trust or Joint Living Trust.

For more information, see:
JOINT PROPERTY
SIMPLE WILL
SPOUSES
WILLS AND TRUSTS

Living Trust

A Living Trust (also known as an "inter vivos trust" or a "revocable trust") is a trust created by a person (known as the "Grantor") for use during that person's lifetime. The fact that the trust becomes effective during the Grantor's lifetime makes the trust an "inter vivos trust." The Living Trusts also includes a provision that allows the Grantor to amend or revoke the trust at any time, thus giving rise to the common name of "revocable trust."

Typically, a Living Trust includes provisions that allow the Grantor, who often serves as trustee, to manage the assets of the trust until such time as the Grantor (i) becomes "disabled" (unable to manage his or her financial affairs) or (ii) simply prefers to have someone else (perhaps a bank's trust department) manage his or her affairs. If that occurs, the trust provisions provide for a "successor trustee" to take over the management of the trust.

During the Grantor's lifetime, distributions are made to the Grantor in fixed periodic amounts. The amount of the distributions can be changed from time to time at the request of the Grantor.

When the Grantor dies, the trust provisions designate the beneficiaries who will receive the Grantor's property, much in the same manner as a Simple Will. At the option of the Grantor, these provisions include specific bequests, distributions of tangible personal property, and distributions of the remaining trust assets. These provisions can also include a trust share that will be maintained for the benefit of the Grantor's minor children; this trust share serves the same function as the "trust for minor children" in the Simple Will. For more information, see the TRUST FOR CHILDREN section of this Guide. The successor trustee carries out these provisions in a role similar to that of an executor.

The Living Trust is often viewed as a preferable alternative to the Simple Will. Some of the perceived advantages of the Living Trust relate to privacy, reduced probate costs, and management of assets. For more information regarding these advantages, see the LIVING TRUST ADVANTAGES section of this Guide.

There are several important factors that must be considered in creating and using a Living Trust.

1. USE OF IT'S LEGAL AS A PLANNING DEVICE. Creating a Living Trust involves careful planning and consideration. Not all of the steps, including the very important step of transferring assets, can be completed while sitting at a computer. Although It's Legal will guide you through the process of creating a valid Living Trust document, it may be appropriate to contact a lawyer regarding legal questions or a bank trust officer regarding a trust department's ability to serve as a successor trustee. It is expected that many It's Legal customers will use the Living Trust document as a planning tool. After using this program to draft an initial document and as an educational device, the user may wish to alter the Living Trust document with the aid of legal counsel.

2. TRANSFER OF ASSETS INTO THE TRUST. In addition to creating and signing the Living Trust document, assets must be transferred into the trust. A Living Trust only applies to the assets that are actually transferred into the Trust. For additional information on this very important point, see the "FUNDING THE TRUST" section of this Guide.

3. POUR OVER WILL. The use of a Living Trust does not eliminate the need for a will. A Grantor may have assets that he or she does not wish to transfer into the Living Trust. For example, it may be preferable to not transfer some personal property such as vehicles, household and personal effects, and a personal checking account. A Pour Over Will serves to handle the distribution of such

assets by requiring that such assets be transferred to the trustee of the Living Trust for final distribution. It is highly recommended that a Living Trust not be signed, unless a Pour Over Will is also properly signed by the Grantor.

4. TAX CONSEQUENCES. Generally, the income earned by the assets transferred into a Living Trust will be taxable to the Grantor on his or her personal income tax returns in the same manner as if the assets continued to be held personally by the Grantor.

5. ESTATE PLANNING. The Living Trust document created using It's Legal, and its companion document, the Pour Over Will, will be appropriate estate planning documents for many situations. However, if the estate is larger than $450,000, it may be desirable to use more complex estate planning techniques that are not provided by this program. For such cases, It's Legal will be beneficial by offering insights into many of the questions that an attorney will ask in preparing a more complex Living Trust.

6. JOINT LIVING TRUST. For married couples desiring the advantages of a Living Trust, another alternative is to create a Joint Living Trust. For additional information, see the "JOINT LIVING TRUST" section of this Guide.

For more information, see:
ESTATE/PERSONAL MATTERS
FUNDING THE TRUST
JOINT LIVING TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST ADVANTAGES
POUR OVER WILL
PROTECTION OF BENEFICIARIES
SIGNING THE LIVING TRUST
SIMPLE WILL
SPECIFIC BEQUESTS
SPOUSES
TANGIBLE PERSONAL PROPERTY
TRUST FOR CHILDREN
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Living Trust Advantages

The Living Trust or Joint Living Trust are often viewed as preferable alternatives to the Simple Will. Some of the perceived advantages of the Living Trusts are as follows:

1. PRIVACY. A Living Trust is more private. Under state law, a will is admitted to probate after the Willmaker dies, so that the terms of the will can be administered. As a result, the will becomes part of the court records that can be inspected by the public upon request. on the other hand, a Living Trust is administered by the successor trustee, without court involvement, and does not become a public record. Thus, the terms of the Living Trust, including the identities of the beneficiaries and the manner in which the Grantor's assets will be distributed, remain private knowledge.

2. REDUCED PROBATE COSTS. A Living Trust may avoid at least some of the perceived "evils" of the probate process. A Will is subject to a court administered process known as "probate". The probate process includes procedures that (1) determine the validity of the Will, (ii) deal with potential Will challenges, (iii) resolve the claims of creditors of the decedent, and (iv) ultimately distribute title to the decedent's assets to the beneficiaries. This process takes time (generally, six months to 3 years), and involves court costs, executor fees, and attorney fees. The cost of probate can vary greatly, depending on state law; the cost may range from 2% of the amount of the decedent's gross assets to 10% or more in some states. However, the costs associated with administering the trust assets after a Grantor's death, including the obligation to prepare various tax returns, account for trust assets, pay the Grantor's debts, and make required distributions, may be similar in amount to the costs of probate. Therefore, it is difficult to predict whether the amount of savings that might result from the use of a Living Trust will be more than a minimal amount.

3. MANAGEMENT OF PROPERTY. A Living Trust offers a mechanism for allowing another person or entity to manage all or some of your assets if you are unable to do so, or if you simply prefer to "have someone else do it". Thus, a Living Trust may serve as an alternative to a conservatorship.

For more information, see:
FUNDING THE TRUST
JOINT LIVING TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST
POUR OVER WILL
SIMPLE WILL
WILLS AND TRUSTS

Funding the Trust

In addition to creating and signing a Living Trust or Joint Living Trust document, assets must be transferred into the trust. A Living Trust only applies to the assets that are actually transferred into the trust. Assets can be transferred both at the time of the creation of the trust and also at later times. At death, the companion document, the Pour Over Will, transfers the Grantor's remaining property (except joint property) into the trust.

Real estate is transferred into the trust through the use of a "deed". Investment accounts, including cash accounts and stock accounts in which the stocks are held in "street name" by the brokerage firm, are transferred by appropriately changing the name on the accounts. Stocks, bonds, and some other types of investments are transferred through the use of a broker or transfer agent. Property that is jointly held (for example, real estate held jointly by spouses) can be transferred into a Living Trust, but the process may require more careful planning because of the joint ownership. This process may require the use of professional assistance, including the advice of a lawyer.

For more information, see:
JOINT LIVING TRUST
JOINT PROPERTY
LIVING TRUST
POUR OVER WILL
PROTECTION OF BENEFICIARIES
SIGNING THE LIVING TRUST
SIMPLE WILL
TRUST FOR CHILDREN
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Trust For Children

The Simple Will, Living Trust and Joint Living Trust documents in It's Legal offer a unique planning opportunity for parents with minor children. If the spouse does not survive the Willmaker (or Grantor), this program allows you to provide for a trust for the minor children. You can provide that all the residuary estate/trust will go into the trust, or you can provide that a percentage of the residuary estate will go to a named beneficiary, with the remainder to the trust. The trust provides for the health, education, maintenance, and support of the children until the youngest child reaches an "adult" age. Often age 25 years is used because it offers the children an opportunity to attend college and "settle down" before receiving their trust shares.

When the youngest child reaches the specified "adult" age, the trust is divided into equal shares for the children and either (i) immediately distributed, or (ii) distributed in several payments. For example, assume that Bill Willmaker and his spouse Rosie have three children: Justin, age 6; Jenny, age 4; and Joe, age 2. Under the first option, the trust would be maintained until Joe reaches age 25 years (or some other specified adult age). The trust would then be divided equally among Justin (now age 29), Jenny (now age 27), and Joe (age 25). The goal is to preserve the trust assets until the youngest child attains "maturity". Under the second option, Bill Willmaker might specify that the final distribution should be made in three distributions at ages 25 years, 28 years, and 31 years. Now when Joe attains age 25 years the trust is divided into three equal shares. Justin receives two-thirds of his share (1/3 because he has attained age 25 years and 1/3 because he has attained age 28 years), and Jenny and Joe will each receive one-third of their respective shares. All three will receive their remaining shares as they attain the appropriate ages.

The trust for children also includes provisions to provide for the possibility that the children will not be living at the time of final distribution of the trust assets.

For more information, see:
FUNDING THE TRUST
JOINT LIVING TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST
POUR OVER WILL
PROTECTION OF BENEFICIARIES
SIGNING THE LIVING TRUST
SIMPLE WILL
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Protection of Beneficiaries

The Living Trust, Joint Living Trust and the Simple Will documents include a provision for the protection of the beneficiaries. The purpose of this provision is to prevent the beneficiaries from impoverishing themselves by "selling" or "assigning" their interests in the trusts to third parties. For example, a 19 year old child might be tempted to "sell" or "trade" all or a portion of his/her interest in a trust for an expensive sports car. This provision does not prevent the 19 year old from making a deal with the car dealer, but it does prevent the car dealer from enforcing the deal against the trust. Sometimes these provisions are known as "spendthrift" provisions.

For more information, see:
JOINT LIVING TRUST
LIVING TRUST
POUR OVER WILL
SIMPLE WILL
TRUST FOR CHILDREN
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Trustee and Executor Powers

The Simple Will, Pour Over Will, Living Trust and Joint Living Trust include provisions that grant broad powers to the Executor and Trustee to carry out the terms of the Will and Trust. In the Simple Will, the listing of powers is short and concise if the Will does not include a children's trust. The Pour Over Will includes a simple provision. If the Simple Will contains a children's trust, and in the case of a Living Trust or Joint Living Trust, the Executor and Trustee powers are more detailed and specific. Further, in these situations, some optional powers are available so that the user can add powers that may be useful to the user's particular situation. For example, a Willmaker who owns a business may choose to include a power that permits the Executor and/or Trustee to continue to operate the Willmaker's business (at least for a short period of time) after the Willmaker's death. In other situations, this power may be irrelevant or undesirable.

For more information, see:
FUNDING THE TRUST
JOINT LIVING TRUST
LIVING TRUST
POUR OVER WILL
PROTECTION OF BENEFICIARIES
SIMPLE WILL
TRUST FOR CHILDREN
WILLS AND TRUSTS

Signing the Living Trust

The Living Trust or Joint Living Trust must be signed by both the Grantor(s) and the Trustee. It is recommended that their signatures be notarized. It is also very important that assets be transferred into the trust; this step does not happen automatically. For more information regarding this important step of transferring assets, see the "FUNDING THE TRUST" section of this Guide.

For more information, see:
FUNDING THE TRUST
JOINT LIVING TRUST
LIVING TRUST
POUR OVER WILL
WILLS AND TRUSTS

Pour Over Will

A Pour Over Will is a specialized Simple Will that is used as a supplementary document to the Living Trust or Joint Living Trust. It's primary function is to "pour over" the Willmaker's remaining assets (at the Willmaker's death) into the Willmaker's Living Trust or Joint Living Trust. The Pour Over Will is a supplementary document to a Living Trust, and should only be used if a Living Trust has been prepared.

A Pour Over Will includes a standard provision that provides for an Executor (Personal Representative in some states). It also includes an optional provision to select a Guardian, if the Willmaker has minor children. Instead of the usual provisions that provide for the distribution of specific bequests, tangible personal property, and the residuary estate, the Pour Over Will simply distributes the Willmaker's remaining assets to his or her Living Trust. The Living Trust then distributes the remaining property, plus the Trust assets, in accordance with the distribution provisions (specific bequests, etc.) of the Living Trust.

The Pour Over Will should be signed with the same formalities as the Simple Will.

For more information, see:
ESTATE/PERSONAL MATTERS
EXECUTOR
JOINT LIVING TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST
SIGNING THE WILL
SPOUSES
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Estate Planning Worksheet

The Estate Planning Worksheet is designed as a worksheet to lead the user through the thought process that is required to prepare a will. This worksheet can be used for both large and small estates. If your estate is less than $450,000, this worksheet can be used to prepare you for using It's Legal's Simple Will document. If your estate is larger than $450,000, you can use this worksheet to prepare for a conference with an estate planning lawyer who will begin by asking for the type of information developed through your use of the Estate Planning Worksheet. Because It's Legal's Living Trust/Pour Over Will combination is a viable alternative to the Simple Will, you can also use the Estate Planning Worksheet to prepare for using those It's Legal documents.

The Estate Planning Worksheet begins by requesting personal information about the Willmaker and the Willmaker's family. Next, the worksheet leads the user through an estimation of the value of the Willmaker's estate. The third step helps the user sort through the Willmaker's priorities as to what persons or entities (beneficiaries) should receive distributions from the Willmaker's estate. If the Willmaker has minor children, an optional section is available to work through the questions that form an adequate provision for minor children. Finally, the worksheet provides some basic information regarding advanced estate planning techniques that might be discussed by an attorney in connection with planning for unique or complex estates.

For more information, see:
DISTRIBUTION OF ESTATE ASSETS
ESTATE/PERSONAL MATTERS
ESTATE PLANNING - ESTATE VALUATION
ESTATE PLANNING - PERSONAL INFORMATION
ESTATE PLANNING VALUATION OF ASSETS
MARITAL DEDUCTION AND CREDIT TRUST

Estate Planning - Personal Information

The preparation of a will requires basic information regarding the Willmaker. In addition to the usual "name and address" questions, it is necessary to know the Willmaker's marital status and whether the Willmaker has children. Generally, a spouse and children are high on the Willmaker's list of priorities, but even if they are not, there may be state laws which provide certain rights in favor of the spouse and/or children, regardless of what the Willmaker may attempt to dictate in his/her will.

In addition, a Willmaker's prior marriage may have resulted in financial obligations to support children or a former spouse from the assets of the Willmaker's estate.

There may be unique information about a spouse or children that should be disclosed so that adequate plans can be made.

For example, a handicapped child may have special needs; special planning may be required to best take advantage of government funding that may be available.

For more information, see:
ESTATE PLANNING WORKSHEET
SPOUSES

Estate Planning - Estate Valuation

The value of the Willmaker's "net estate" is critical information to the estate planner. A high value, more than $450,000, suggests that more complex estate planning techniques may be required to minimize the tax impact. The "net estate" is the value of the Willmaker's assets, minus the Willmaker's debts and liabilities. If the Willmaker has a spouse, the estate planner will need "net estate" information for both the Willmaker and the spouse.

The Estate Planning Worksheet gives the user several alternatives in determining the net estate. First, the Willmaker can simply provide a single amount as the estimated net value of the Willmaker's estate. This may work well if the Willmaker has only a few assets which can be easily totaled. However, it can be expected that even in the more simple situations, the estate planner will often request additional information regarding the individual assets.

Second, the user can provide a "summary listing" which provides summary information in general asset categories. This summary will work well in situations where the Willmaker has only one or two items in each asset category.

Third, the Estate Planning Worksheet allows the user to provide a "detailed" listing. With this option, the user can provide information regarding individual assets in each category. The primary reason for using this option is to make sure that all of the Willmaker's assets have actually been included. The extra detail is often not needed by the estate planner.

For more information, see:
ESTATE PLANNING - VALUE OF ASSETS
ESTATE PLANNING WORKSHEET
JOINT PROPERTY

Estate Planning - Valuation of Assets

Some general rules should be followed in providing values for assets. Generally, the assets should be valued at their fair market value, i.e., the value paid by a willing buyer to a willing seller. Often the fair market value of an asset will be more or less than its cost. For example, the fair market value of a personal residence is often higher than its cost to the Willmaker.

Note: it is very important to provide accurate information regarding the ownership of the assets. For example, the "joint" column should only be used to list assets that are jointly owned by the Willmaker and the Willmaker's spouse. If the Willmaker owns property jointly with another person, the Willmaker's share of the joint property should be reported in the Willmaker's column.

Cash accounts, IRA accounts, and retirement plans should be listed at their current values. However, it is important to remember that a retirement plan may increase significantly in value over time. Investment accounts, stocks, and bonds should be valued at their current market value, not their original cost. Do not deduct any amount for the cost of commissions that might be required to convert these items to cash. Information regarding the values of U.S. Savings Bonds can be obtained by contacting a bank or brokerage firm. If you have more stocks and bonds than what the space of this program provides, combine some of the information before entering the information into the program.

IRA accounts, retirement plans, and some other types of accounts allow the owner to designate a beneficiary. A beneficiary is the person or entity entitled to receive the value of the account when the owner dies. It is important to understand that the designated beneficiary will receive the value of the account, even if this is in conflict with the terms of the owner's will. In other words, the designation of the beneficiary generally takes priority over the terms of the will. This information is very important for the estate planner. For additional information regarding beneficiaries, see the section of this Guide, entitled "Life Insurance, Annuity, and Pension Plan Designations.

Real estate may be difficult to value. However, appraisals for property tax purposes, and the recent sales of similar real estate can be useful in estimating the fair market value.

Life insurance policies on the Willmaker, which are also owned by the Willmaker should be listed at the value that will be paid as death benefits. Generally, this means that the face amount should be listed, not the current value that would be paid if the policy was surrendered to the life insurance company. Insurance policies on the life of the spouse should be listed as an asset of the spouse. If the Willmaker owns life insurance on persons other than the Willmaker or the Willmaker's spouse, only the amount that would be received if the policy was surrendered to the life insurance company should be listed.

Business interests may be difficult to value, but should be at least estimated, based on the assumption that a willing buyer would pay a fair and reasonable price. Cars and vehicles can be valued using pricing books (sometimes called "blue books") that are available at car dealerships. As an alternative, you can check the sales listings in your local newspaper to obtain an estimated value.

It is tempting to overvalue household furnishings and personal belongings. The value listed should be the value that such items would bring if sold as "used" items. Frequently this value is less than the value of such items to the Willmaker who likely paid a much higher price.

Debts and liabilities should be listed at an amount equal to the current outstanding principal amount. For example, the amount of a mortgage should be the current principal balance; credit cards should be listed at the current outstanding balance. It is not necessary to list current bills such as rent payments and

outstanding utility bills.

For more information, see:
ESTATE PLANNING - ESTATE VALUATION
ESTATE PLANNING WORKSHEET
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATNS

Distribution of Estate Assets

The Estate Planning Worksheet requests information regarding the Willmaker's priorities as to which persons should receive distributions from the Willmaker's estate. Often the Willmaker's spouse is the choice to receive the entire estate, even if there are minor children. The assumption is that the spouse will provide for the needs of the children. However, it is also necessary to provide for the possibility that the Willmaker's spouse will not survive the Willmaker, for example if both are killed in an automobile accident. In such a case, the Willmaker's second priority, often the children, becomes very important.

If the Willmaker has children who are not also the children of the Willmaker's spouse, as in the case of children from a prior marriage, the Willmaker may want to provide for both the spouse and the children as a first priority. Sometimes there is a child with a unique need which may suggest that a larger share should be provided to that child. Sometimes the unique need suggests that the distribution should be made through a trust rather than outright, so that a trustee will be able to monitor the use of the funds.

If the Willmaker does not have a spouse or children, other family members, or perhaps charities, may be a high priority. Sometimes an elderly parent has special needs that the Willmaker may wish to recognize.

In some cases, the Willmaker may have certain items of property that the Willmaker would like to have distributed to certain people. For example, it may be important that the Willmaker's wedding ring be distributed to a specific child. Such items can be handled as specific bequests. Specific bequests are generally listed first in a Will. The remaining property is then distributed as the residuary estate.

The Estate Planning Worksheet provides an optional "distribution summary". This summary allows the user to indicate how the Willmaker's estate should be distributed, assuming that all of the intended beneficiaries survive the Willmaker. This distribution summary is a summary of the residuary estate. In other words, the distribution summary assumes that specific bequests, if any, have already been made.

For more information, see:
ESTATE PLANNING WORKSHEET
LIVING TRUST
SIMPLE WILL
WILLS AND TRUSTS

Marital Deduction and Credit Trust

The "marital deduction" is a federal tax law that works as follows. The total amount given to a SURVIVING SPOUSE can be DEDUCTED from the taxable estate in calculating the amount of federal estate tax. The amount that can be given to a spouse under this rule is unlimited. Thus, whatever is given by the Willmaker to the Willmaker's spouse (perhaps the entire estate) is tax-free for federal estate tax purposes.

This works fine for the estate of the first spouse to die. However, unless proper planning is used, the marital deduction can cause the loss of the benefit of the Willmaker's "unified credit". Generally, all taxpayers have a "unified credit" which can be applied as a reduction of the federal estate tax. By applying the unified credit, federal estate taxes are avoided on the first $600,000 of estate assets.

Note: it is possible for the Willmaker to use up some of the unified credit during his/her lifetime, if substantial gifts are made by the Willmaker. In such cases, the Willmaker might not have enough unified credit available at the time of the Willmaker's death to protect the full $600,000.

The Problem: if the Willmaker leaves everything to the Willmaker's spouse, the Willmaker's unified credit is simply lost because it is not used--it is not needed because of the unlimited marital deduction. The issue is then whether there is a way to use the Willmaker's unified credit while still achieving the Willmaker's goal of leaving everything to his/her spouse.

The estate planning answer is to use a "credit trust". This solution results in provisions in the Willmaker's Will that create a credit trust. In simplified terms, the first $600,000 in assets from the Willmaker's estate is placed in a trust. The trust includes terms that allow the Willmaker's spouse to receive distributions from the trust during his/her lifetime. After the spouse's death, the trust assets are distributed to other beneficiaries, perhaps the children. Because the assets in the trust are not distributed outright to the spouse by the Willmaker's executor, the trust assets do not qualify for the marital deduction. However, the Willmaker's unified credit offsets the tax, and there is no federal estate tax in the Willmaker's estate. Further, the spouse is not required to include the trust assets in his/her estate, and thus the spouse's taxable estate is lower than what it would have been had the Willmaker distributed the "first $600,000" outright to the spouse. See the following example:

> EXAMPLE: Assume that Mary has assets of $700,000 and her spouse, Joe has assets of $500,000. If Mary dies first and leaves all of her assets outright to Joe, there will be no tax in her estate because of the unlimited marital deduction. When Joe dies, he now has $1,200,000. Joe could protect the first $600,000 by using his unified credit; however, his estate would pay approximately $235,000 on the second $600,000.
>
> However, if Mary includes a credit trust in her Will, the first $600,000 in her estate will go into the trust. Her unified credit will be sufficient to offset the federal estate taxes. The remaining $100,000 will pass outright to Joe. When Joe dies, his estate of $600,000 ($500,000 + $100,000) is also fully protected by the unified credit. Thus, the credit trust provides a savings of $235,000.

This estate planning technique can also be used by adding credit trust provisions to a Living Trust that take effect upon the death of the Grantor.

For more information, see:
CHARITABLE TRUST
ESTATE PLANNING WORKSHEET

GENERATION SKIPPING TAX
LIFE INSURANCE TRUST
LIVING TRUST
MARITAL TRUST
WILLS AND TRUSTS

Marital Trust

A "Marital Trust" (also known as a "QTIP" trust) is a trust that is sometimes created under a Willmaker's will (or Living Trust), in addition to a "Credit Trust". Generally, a trust does not qualify for the marital deduction. That characteristic works to the advantage of the Willmaker with respect to the Credit trust which helps the Willmaker avoid taxes on the first $600,000 in estate assets.

However, to avoid taxes on the remaining assets by using the unlimited marital deduction, the Willmaker's remaining assets will need to be distributed outright to the spouse, absent an applicable exception. In many cases, the Willmaker's intent is to distribute the remaining assets to the spouse, and so further planning may not be necessary.

In some cases, however, the Willmaker would like to use a trust for the remaining estate assets, primarily so that the Willmaker can control the distribution of the assets after the death of the spouse. A Marital trust allows the Willmaker to create a trust for the benefit of the Willmaker's spouse that qualifies for the "marital deduction". Thus, with respect to the assets in excess of $600,000, the Willmaker can both (i) avoid taxes because of the unlimited marital deduction, and (ii) control the ultimate distribution of the assets by using a trust.

For more information, see:
CHARITABLE TRUST
ESTATE PLANNING WORKSHEET
GENERATION SKIPPING TAX
LIFE INSURANCE TRUST
LIVING TRUST
MARITAL DEDUCTION AND CREDIT TRUST
WILLS AND TRUSTS

Generation Skipping Tax

Some persons have attempted to reduce the burden of estate taxes by making distributions of significant assets to their grandchildren, rather than their children. By doing so, the assets are included in the estates of the grandparents and the grandchildren, but not in the estates of the children. This technique might be very acceptable, if the children do not need the assets.

However, the advantage of using this technique is limited by the "generation skipping tax". This tax is imposed on transfers by a person to grandchildren and other similar relatives ("skip persons" in federal tax parlance) who are deemed to be more than one generation removed from the person under federal tax law. Generally, each person has a $1,000,000 exemption, which means that a person can make transfers to "skip persons" that total $1,000,000 for all such transfers before the general skipping tax takes effect.

Persons who contemplate making significant gifts to grandchildren and other "skip persons" should consult an attorney regarding planning techniques that may be available to minimize or eliminate the effect of the generation skipping tax.

For more information, see:
CHARITABLE TRUST
ESTATE PLANNING WORKSHEET
LIFE INSURANCE TRUST
LIVING TRUST
MARITAL DEDUCTION AND CREDIT TRUST
MARITAL TRUST
WILLS AND TRUSTS

Life Insurance Trust

A Life Insurance Trust is a trust created by a Grantor (and sometimes the Grantor's spouse as a Co-Grantor) to own life insurance on the life of the Grantor and/or the Grantor's spouse. The advantage of using the Trust, rather than simply owning the life insurance outright, is that the life insurance proceeds received by the Trust at the death of the Grantor are not includable in the Grantor's estate.

To create a Life Insurance Trust, a trust document is prepared and signed. The Trust then applies for a life insurance policy on the Grantor's life. As an alternative, an existing policy can be transferred into the Trust. However, if that is done, the life insurance proceeds will still be included in the Grantor's estate, unless the Grantor dies more than 3 years after the date of the transfer of the existing policy into the Trust. Annually, the Grantor makes contributions or gifts to the Trust so that the Trust has funds from which to pay the insurance premiums. Upon the death of the Grantor, the life insurance proceeds are paid into the Trust and distributed in accordance with the Trust provisions.

Life Insurance Trusts are used most frequently as a means of providing liquid assets at the time of the death of the Grantor. For example, the Grantor may own a profitable small business worth $2,000,000, but has few liquid assets such as cash, stocks, or other similar investments. When the Grantor dies, there may be substantial federal estate taxes with little available cash to pay the taxes. The life insurance proceeds can be loaned by the trust to the estate to pay the taxes. Often this is acceptable because the beneficiaries of the Trust are the same as the beneficiaries under the Grantor's Will. By using a Life Insurance Trust to own the life insurance, the estate avoids paying the additional estate taxes that would have otherwise been caused by having the Grantor directly own the life insurance and including the proceeds in the Grantor's estate.

There are many specific provisions that must be included in the Life Insurance Trust to avoid problems with the Internal Revenue Service. Further, the procedures followed by the trustee in administering the Trust must be handled in a manner that avoids a successful challenge by the IRS that the Grantor is really the owner of the Life Insurance Trust.

If the IRS would succeed with that argument, the life insurance proceeds would be included in the Grantor's estate. Therefore, it is recommended that you consult with an attorney, if you have further questions.

For more information, see:
CHARITABLE TRUST
ESTATE PLANNING WORKSHEET
GENERATION SKIPPING TAX
LIVING TRUST
MARITAL DEDUCTION AND CREDIT TRUST
MARITAL TRUST
WILLS AND TRUSTS

Charitable Trust

A Charitable Trust is a special trust that includes one or more charitable organizations as beneficiaries. A Charitable "lead" Trust pays the income of the Trust to the charity for a term of years, or perhaps until the death of the Grantor. At the end of that time, the remaining assets are distributed in accordance with the Trust to other beneficiaries, perhaps the Grantor's children.

The more common Charitable "remainder" Trust is a trust that pays the income to the Grantor (and perhaps the Grantor's spouse) during the life of the Grantor (and/or the Grantor's spouse), and upon the death of the Grantor, the remaining Trust assets are distributed to one or more charitable organizations.

These trusts entitle the Grantor to a charitable income tax deduction at the time that the assets are initially transferred into the trust. In addition, in the case of a charitable remainder trust, the assets of the trust are not included in the Grantor's estate. This has the effect of reducing federal estate taxes that might otherwise have been payable. To qualify for these tax benefits the provisions of the trust must meet very specific requirements of the federal tax code.

For more information, see:
ESTATE PLANNING WORKSHEET
GENERATION SKIPPING TAX
LIFE INSURANCE TRUST
LIVING TRUST
MARITAL DEDUCTION AND CREDIT TRUST
MARITAL TRUST
WILLS AND TRUSTS

Executor

The person or entity named in a Will who has the responsibility of carrying out the terms of the Will (that is, collecting the Willmaker's assets, paying the debts, and distributing the remaining assets to the beneficiaries.)

Some statutes use the term "personal representative", rather than the term "executor." Although the use of either term is acceptable, the program allows the use of the less familiar term, "personal representative", if that is desired.

For more information, see:
ESTATE/PERSONAL MATTERS
POUR OVER WILL
WILLS AND TRUSTS

Probate

Court procedures that determine whether a Will is valid or invalid, and monitor the subsequent process of paying the debts of the decedent and distributing the remaining assets to the beneficiaries.

Trusts

An intangible entity created during a person's life (living trust) or under a person's Will. A trust provides for the management of all or a portion of the assets of the person (Trustor/Willmaker) in accordance with the terms specified in the Trust document or Will.

For more information, see:
ESTATE/PERSONAL MATTERS
LIVING TRUST
SIMPLE WILL
TRUST FOR CHILDREN
TRUSTEE
WILLS AND TRUSTS

Trustee

The person or entity designated to manage trust assets and make distributions in accordance with the terms of the trust.

Premarital Agreement

A Premarital Agreement is an agreement between prospective spouses in contemplation of marriage. The agreement becomes effective upon marriage. The Premarital Agreement should be discussed by the parties well in advance of the marriage. Sufficient time should be permitted to allow both parties to consult their separate legal counsel or to sufficiently consider the agreement in order to avoid any later claims that the agreement is unenforceable because it was unfair.

The exchange of something for value, referred to as "consideration" is required for any contract to be enforceable. Premarital Agreements require no additional consideration other than the marriage itself. Therefore, the Agreement does not become effective until the marriage ceremony is solemnized. Because the only consideration for a Premarital Agreement is the marriage ceremony, such an agreement cannot be entered into after the ceremony.

From a legal perspective, marriage can be viewed as a business arrangement. Business transactions should not be entered without putting the terms in writing. Marriage is really no different. It is wise for the parties to sit down and work out the terms of the agreement, and anticipate how issues will be handled if the association must be dissolved. Without an agreement the state will impose an agreement on the parties in the event of divorce or death. By working through the provisions of this Agreement, a couple will develop a process of being able to communicate which will serve them well in the marriage relationship.

A number of things may be clarified in a Premarital Agreement pertaining to property rights. For example, the agreement may explain how property previously owned or acquired during the marriage will be distributed upon divorce, death, or the occurrence or non-occurrence of any other event. Other items which may be addressed include:

1. Handling of debts;
2. Making of a will or trust;
3. Ownership rights in and disposition of a death benefit from a life insurance policy;
4. Any other matter regarding personal rights and obligations as long as such matter does not violate public policy or criminal laws.

However, certain aspects that a couple may want to include in the Agreement may not be honored subsequently, such as provisions regarding child support or alimony. Public policy considerations may prevent a court from enforcing such provisions. Due to the difference in various states, the drafting of such provisions should be done in consultation with an attorney.

To further complicate matters, we live in a very mobile society. Couples who enter an agreement in one state may very well relocate to another state. To date, approximately twenty states have adopted the "Uniform Premarital Agreement Act." (AZ, AK, CA, HI, IL, IA, KS, ME, MT, NV, NJ, NC, ND, OR, RI, SD, TX, VA). This common act is a law that recognizes such agreements and clarifies what can be included in a Premarital Agreement. However, there are variations among the various states' enactment of the uniform law.

For more information, see:
ADDITIONAL INSTRUMENTS
DEATH OF A SPOUSE
DISCLOSURE
DISINHERITANCE OF SPOUSE

DISSOLUTION OF MARRIAGE
DIVORCE
EARNINGS DURING MARRIAGE
ESTATE ASSET DISTRIBUTION
ESTATE/PERSONAL MATTERS
ESTATE PLANNING - PREMARITAL AGREEMENT
EXECUTION OF PREMARITAL AGREEMENT
JOINT OWNERSHIP OF PROPERTY
LIVING EXPENSES/DEBTS
MISCELLANEOUS PROVISIONS
NAMES OF CHILDREN/SUPPORT OF CHILDREN
PERSONAL EFFECTS
RECITALS
RESIDENCE
REVOCATION OF PREMARITAL AGREEMENT
SEPARATE PROPERTY
SPOUSE'S DISABILITY
SUPPORT OF SPOUSE
TAXES
VALUATION OF ESTATE ASSETS

Recitals

Many couples who marry today have previously been married or are dual career couples. For these and other reasons, many couples contemplating marriage desire to address potential disagreements by making an agreement in advance of the marriage ceremony. Recitals describe the background information and explain the reasons for making this agreement. This explanatory information assists in the interpretation of the agreement.

For more information, see:
PREMARITAL AGREEMENT
SEPARATE PROPERTY

Separate Property

This provision states the couple's preference that any property owned prior to the marriage shall remain the separate property of the party who owned the property prior to the marriage. Care should be taken not to commingle such separate property with other assets of the couple. An option also permits the couple to state their intention that property acquired during the course of the marriage should also be treated as the separate property of the acquiring spouse.

If a couple resides in a community property state at any time after marriage, all real and personal property, wherever located, acquired after marriage, (except property acquired by gift, devise, bequest or inheritance) will be community property of the couple. This community property scheme can be altered by a Premarital Agreement.

An additional provision anticipates the transfer of separate property without the necessity of obtaining the signature of the other spouse. However, in some instances a third party may require the signature of the non-owning spouse to assure that the non-owning spouse will not assert any ownership rights in the transferred property. The non-owning spouse agrees to sign such documents for the sole purpose of reflecting the relinquishment of any ownership interest for the convenience of the owner spouse. Such signature will not be interpreted as any personal liability for the non-owning spouse who signs the document.

For more information, see:
PREMARITAL AGREEMENT
RECITALS
RESIDENCE

Residence

This provision identifies who owns or leases the residence of the parties. The parties may specify how the mortgage/lease payments and expenses associated with the maintenance of a residence will be shared.

Earnings During Marriage

Generally the law will consider any earnings of husband or wife to be property owned jointly by both parties. This provision provides that each party desires to maintain his or her earnings as separate property. Care should be taken not to commingle such separate property with other assets of the couple.

The couple may desire to use their earnings for the payment of joint and/or household expenses. An optional provision provides that such usage should not be interpreted as implying joint ownership of the earnings.

For more information, see:
LIVING EXPENSES/DEBTS
PREMARITAL AGREEMENT
SEPARATE PROPERTY
SPOUSE'S DISABILITY

Living Expenses/Debts

Normally a husband and wife are responsible for the debts of the other if such debts are related to the necessities of life, such as food, shelter and medical care. However, the parties may want to identify the separate treatment of certain expenses. The program also permits the couple to allocate responsibility for debts incurred by credit cards.

A couple may want to specify how living expenses will be handled by them. Sample provisions provide an outline for handling typical living expenses with contributions to a joint checking account. Typical living expenses are listed and can be classified as joint or separate expenses. Additional space is also provided for the couple to compose their own arrangement.

The Debts provision states that debts incurred prior to the marriage shall remain the responsibility of the party incurring such debt. Also, an optional provision allows the parties to maintain separate liability for debts incurred during the marriage.

Caution is advised relative to debts for the necessities of life. Some jurisdictions will hold a spouse responsible for certain necessities such as medical expenses, food, clothing or shelter irrespective of a premarital agreement stating otherwise.

For more information, see:
PREMARITAL AGREEMENT
RECITALS
RESIDENCE

Joint Ownership of Property

This provision allows the couple to state in advance how property acquired after marriage will be owned, or to make that decision on a case-by-case basis. Property held by the husband and wife in joint tenancy with rights of survivorship will pass to the survivor on the death of the first spouse. The property passes by virtue of joint tenancy irrespective of any provision to the contrary in a will.

In contrast, each party can hold an undivided one-half interest in any property, and each one-half will pass to the respective spouse's heirs upon death. If the spouse has a will, the one-half interest in the property will pass according to the terms of the spouse's will. If the spouse dies without a will, heirship of property other than real estate will be determined by the laws of the state where the spouse died. If the property is real estate, heirship will be determined by the laws of the state in which the real estate is located.

For more information, see:
DISCLOSURE
DISSOLUTION OF MARRIAGE
PREMARITAL AGREEMENT
RESIDENCE
SEPARATE PROPERTY
SPOUSE'S DISABILITY

Taxes

This required provision allows the couple to take advantage of certain income, gift, estate tax provisions that benefit married couples. These benefits might not otherwise be available, depending on the interpretation of the Premarital Agreement. For example, the benefit that might be obtained by filing a joint federal or state income tax return can be preserved.

In addition, a married couple may make joint annual gifts (as of 1992 being $10,000 per donor to any other person (donee); or $20,000 per couple to any donee even though only one member of the couple actually makes the gift). Certain tax free transfers may be made between married couples. Also there is an unlimited marital deduction under the federal estate tax law for the transfer of property to the surviving spouse on the death of the first spouse. (NOTE: An explanation of the Marital Deduction and Credit Trust can be found in the Wills and Trusts section of the Guide.) For further information of tax considerations, consult your accountant or attorney.

For more information, see:
JOINT OWNERSHIP OF PROPERTY
LIVING EXPENSES/DEBTS
PREMARITAL AGREEMENT

Names of Children/Support of Children

As further evidence of the reasons for entering this Agreement, which reasons support the enforcement of this Agreement, the parties should state the names of any children that are not children of the couple. Deceased children's name are also included.

The support provision provides for the parties agreement that a step-parent may support step-children without establishing the legal responsibility to do so. The Agreement does not contain a provision regarding the support of natural children of the couple in the event of divorce because such agreements are viewed as contrary to public policy. The concern is that the couple might enter into an agreement that would not be fair to the children. The determination of child support is within the sole authority of the courts.

For more information, see:
DISSOLUTION OF MARRIAGE
PREMARITAL AGREEMENT
SUPPORT OF SPOUSE

Dissolution of Marriage

This provision does not plan for separation or divorce. However, the parties may realize that such events are not uncommon. The parties can express their intentions regarding how their property will be divided if they separate or upon dissolution of marriage (divorce).

Traditionally the law has opposed settlement agreements made at the time of marriage. More and more courts and jurisdictions are looking to Premarital Agreements to govern property settlements. Common settlement provisions are presented for inclusion in the Agreement. The couple may also compose their own provisions. Whether these provisions will ultimately be followed will depend upon the jurisdiction in which the parties reside at the time of separation or dissolution. To ensure compliance with local law, an attorney should be consulted. The provisions of the Premarital Agreement may also need to be reviewed if the couple changes their state of residence.

For more information, see:
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
SUPPORT OF SPOUSE

Support of Spouse

Fewer and fewer courts are awarding alimony upon dissolution of a marriage. If each spouse is self-supporting, each party may agree not to seek alimony in the event of separation or dissolution of marriage. Merely reciting that the parties are self-supporting if they are not, will not be persuasive. The court considering the support issue will make an independent determination of the need for alimony, if any.

For more information, see:
EARNINGS DURING MARRIAGE
NAMES OF CHILDREN/SUPPORT OF CHILDREN
PREMARITAL AGREEMENT

Spouse's Disability

This provision allows each party to financially provide for the other in the event of disability.

Death of a Spouse

The Premarital Agreement can make provision as to the distribution of property upon death. The couple may not want this Agreement to be interpreted as waiving the right to inherit from the other or to serve as executor of the other's estate.

Of course the parties may not want their estate to pass to the surviving spouse. For example, each party may have sufficient assets to provide for his or her own support, or the parties may want to provide for their children or grandchildren. In such situations a spouse may prefer to distribute his or her estate to someone other than the surviving spouse.

Even if the parties agree that their estates are to be distributed to someone other than their spouse, they may want certain personal effects to pass to the surviving spouse. For example, household items or the personal residence of the couple.

Another option is to allow the creation of a Will that can override the provisions of this Agreement should that be deemed appropriate in the future by the couple.

Many states have enacted laws that prohibit the total disinheritance of a spouse. For example, state laws provide for rights in a spouses property known as "dower" or "curtsey." Also homestead provisions prevent the removal of a spouse from his/her home. Such laws may allow a spouse to elect to take a share of the estate as specified by state law, commonly one-third or one-half of the estate. Spouses may knowingly waive these marital rights in many jurisdictions. The court having jurisdiction over the distribution of the deceased spouse's estate will make the final decision. To ensure compliance with local law, an attorney should be consulted. The provisions of the Premarital Agreement may also need to be reviewed if the couple change their state of residence.

It's Legal provides estate planning documents which may provide additional information useful in completing a premarital agreement and in preparing will or trust documents. Additionally, explanation of terms and practices within an estate planning context is provided under the Wills and Trusts section of the Guide.

For more information, see:
DISINHERITANCE OF SPOUSE
ESTATE ASSET DISTRIBUTION
ESTATE PLANNING - PREMARITAL AGREEMENT
JOINT OWNERSHIP OF PROPERTY
PERSONAL EFFECTS
PREMARITAL AGREEMENT
TAXES
WILLS AND TRUSTS

Disinheritance of Spouse

Disinheriting means to deprive another person (an heir) of property that would have been distributed to that person under the laws of intestacy. In some instances, an agreement between a willmaker and a spouse, signed prior to their marriage, may permit the spouse to not be included in the will. However, many states "protect" spouses with laws that permit a spouse to receive a portion of the estate even though the deceased person's will does not provide for the spouse. You may want to consult with an attorney regarding the legal rights of a willmaker's spouse to receive property from the estate, despite the provisions of a will or premarital agreement.

For more information, see:
DEATH OF A SPOUSE
ESTATE ASSET DISTRIBUTION
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
ESTATE PLANNING - PREMARITAL AGREEMENT

Personal Effects

Personal effects may be referred to as tangible personal property. Jewelry, furniture, cars, and other items that have a physical essence are considered personal effects (or tangible personal property). Personal effects do not include intangible personal property such as cash accounts, stocks, bonds, and other similar assets. (For an additional explanation of tangible and intangible personal property, see the Wills and Trusts section of the Guide).

For more information, see:
DEATH OF A SPOUSE
ESTATE ASSET DISTRIBUTION
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
SEPARATE PROPERTY
ESTATE PLANNING - PREMARITAL AGREEMENT

Valuation of Estate Assets

The value of an estate enables more accurate planning in preparing a will or other estate planning document. The "net estate" should be determined in any planning activity. The "net" value of an individual's assets is the total assets minus debts and liabilities. A high value, more than $450,000, suggests that more complex estate planning techniques may be required to minimize the tax impact. The Estate Planning Worksheet included in It's Legal provides several alternatives in determining the net estate including a "summary listing" which provides summary information in general asset categories for situations where there are only one or two items in each asset category, and a "detailed" listing for listing of individual assets in each category.

Some general rules should be followed in providing values for assets. Generally, the assets should be valued at their fair market value, i.e., the value paid by a willing buyer to a willing seller. Often the fair market value of an asset will be more or less than its cost. For example, the fair market value of a personal residence is often higher than its cost to the owner.

Items which should be valued include cash accounts, IRA accounts, and retirement plans, which should be listed at their values at the time of calculating the "net estate". Investment accounts, stocks, and bonds should be valued at their current market value, not their original cost. Other items included in the valuation of an estate include real estate, life insurance policies, business interests, cars and other vehicles, household furnishings and personal belongings.

In addition, debts and liabilities must be considered. These should be listed at an amount equal to the current outstanding principal amount. For example, the amount of a mortgage should be the current principal balance; credit cards should be listed at the current outstanding balance. It is not necessary to list current bills such as rent payments and outstanding utility bills.

For more information, see:
DEATH OF A SPOUSE
ESTATE ASSET DISTRIBUTION
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
SEPARATE PROPERTY

Estate Asset Distribution

The distribution of assets may be specified in documents other than a premarital agreement. For example, a will may have been prepared prior to the premarital agreement which provides for specific distribution of property. In preparing a premarital agreement, consideration should be given to documents which identify and distribute personal property and other assets, such as life insurance policies or employee benefit plans with beneficiary designations.

For more information, see:
DEATH OF A SPOUSE
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
SEPARATE PROPERTY
ESTATE PLANNING - PREMARITAL AGREEMENT

Estate Planning - Premarital Agreement

In estate planning, consideration may need to be given to the provisions of a premarital agreement. The Premarital Agreement may contain specific provisions regarding the ownership of assets prior to the marriage and guidance in the distribution of personal property and assets and should be consulted in estate planning activities.

For more information, see:
DEATH OF A SPOUSE
ESTATE ASSET DISTRIBUTION
JOINT OWNERSHIP OF PROPERTY
PREMARITAL AGREEMENT
SEPARATE PROPERTY
PERSONAL EFFECTS

Revocation of Premarital Agreement

This provision allows for the revocation of a Premarital Agreement by the signing of a written Revocation by both spouses. To assure anyone dealing with the parties that the Agreement has not in fact been revoked, the provision requires that any revocation must be filed of public record with the appropriate office, such as a county recorder.

For more information, see:
PREMARITAL AGREEMENT

Additional Instruments

To accomplish the intentions of this Agreement, it may be necessary for a spouse to sign an instrument relinquishing all of his/her rights in the property of the other spouse. In some instances a third party may require the signature of the non-owning spouse to assure that the non-owning spouse will not assert any ownership rights in the transferred property. The non-owning spouse agrees to sign such documents for the sole purpose of reflecting the relinquishment of any ownership interest for the convenience of the owner spouse.

For more information, see:
PREMARITAL AGREEMENT
SEPARATE PROPERTY

Disclosure

The parties to a Premarital Agreement do not stand at arm's length to each other as in traditional contract bargaining. They are in a confidential relationship, and it is the duty of each to be frank and completely honest in disclosing all of the circumstances bearing on the agreement. In other words, the parties enter this agreement with no intention of taking advantage of the other.

If one of the parties was not provided with a full disclosure of the property or financial obligations of the other spouse, the agreement may be revoked. Grounds for revocation include proving that the agreement was involuntary, was unfair when signed, or that the party seeking revocation did not have, or could not have reasonably had an adequate knowledge of the property or financial obligations of the other spouse. Therefore, full and fair consideration of the agreement itself should be made in advance of the marriage. Also a complete disclosure of the financial affairs of each party must be made.

The program provides a format for completing a financial disclosure exhibit for both the prospective husband and prospective wife. The "Exhibit" document may also be used to prepare a financial disclosure exhibit. Generally every asset does not need to be listed. The total value of each category of asset or liability is generally considered sufficient disclosure. The party preparing the exhibit should sign it, and the spouse receiving the exhibit should initial it to indicate such receipt.

For more information, see:
PREMARITAL AGREEMENT
RECITALS
REVOCATION OF PREMARITAL AGREEMENT

Miscellaneous Provisions

Despite the existence of premarital agreements, there remain substantial uncertainties as to the enforceability of all, or a portion, of the provisions which may be contained in such agreements. Also, there is significant variation by state regarding the treatment of these agreements.

The Premarital Agreement includes provisions to assist in the enforceability of the Agreement: (i) the agreement shall be binding on those who seek to enforce the agreement as the representative of the parties, (ii) the agreement is the complete agreement of the parties, and (iii) any provisions which may be found to be unenforceable shall be limited or deleted, and the remainder of the agreement shall remain enforceable.

For more information, see:
PREMARITAL AGREEMENT

Execution of Premarital Agreement

The Agreement must be signed PRIOR to the wedding ceremony, because the consideration (value) for entering the agreement is the act of marriage itself.

The signature block also provides for the document to be signed in the presence of a notary public to witness the agreement and permit the recording of the agreement in the public records. The states of North Dakota, Ohio and South Carolina require that the agreement be signed in the presence of witnesses.

For more information, see:
PREMARITAL AGREEMENT

Financial Documents

It's Legal also contains documents which might be used in a business transaction such as a Bill of Sale or a Promissory Note. An agreement providing for the use or sale by one party of proprietary information, goods or services of another party is also included in this category.

For more information, see:
BAD CHECK NOTICE
BANKRUPTCY
BILL OF SALE
BILL OF SALE - MOTOR VEHICLE
GENERAL RECEIPT
EQUIPMENT LEASE
LICENSE AGREEMENT
PROMISSORY NOTE

Bill of Sale

A Bill of Sale is a document under which a seller transfers personal property to a buyer. This document CANNOT be used to transfer real estate. If the property that will be transferred under this document has been pledged as security for a loan, it may be necessary to obtain a release from the party to whom the loan is owed. In such cases, it is advisable to consult with an attorney.

The property listing can be detailed, or it may be described in one or more broad categories of property. Obviously, a more detailed description makes it easier to identify the property that is being transferred.

Generally, the Seller provides a warranty that the property is being transferred free and clear of any liens or encumbrances, i.e., no other party has a valid claim to the property. Usually, the Seller transfers the property "as is", but in some cases, the Seller may be willing to warrant that the property "is in good working condition."

The Bill of Sale should be signed by both the Buyer and the Seller, and becomes effective as of the date provided in the text of the document.

For more information, see:
FINANCIAL DOCUMENTS

Bill of Sale - Motor Vehicle

The Bill of Sale - Motor Vehicle is a document under which one or more sellers transfer title rights in a motor vehicle to one or more buyers. This document only represents the transfer of the RIGHT to ownership; the motor vehicle's certificate of title represents ACTUAL ownership. Thus, this document and the certificate of title are needed to effectuate the transfer of the motor vehicle.

Federal law requires a statement by the seller as to the odometer mileage at the time of the transfer of ownership. In many states the odometer statement is included as part of the certificate of title. It's Legal includes an optional "Odometer Certification" section that provides the required information. The buyer(s) are required to acknowledge the odometer statement by signing the Bill of Sale - Motor Vehicle immediately below the odometer statement.

Generally, the seller provides a warranty that the property is being transferred free and clear of any liens or encumbrances, i.e., no other party has a valid claim to the property. If the vehicle that will be transferred under this document has been pledged as security for a loan, it may be necessary to obtain a release from the party to whom the loan is owed. Such a loan is a "lien" or "encumbrance" on the vehicle.

Usually, the seller transfers the property "as is", but in some cases, the seller may be willing to warrant that the property "is in good working condition", subject to a condition that the seller will only be liable for repair costs up to a specific amount if incurred during a specific time period after the date of the sale.

The Bill of Sale - Motor Vehicle should be signed by the buyer(s) and the seller(s), and becomes effective as of the date provided in the text of the document. The buyer(s) should make sure to obtain appropriate insurance coverage for the vehicle.

For more information, see:
FINANCIAL DOCUMENTS

Equipment Lease

An equipment lease is an agreement that specifies the rights and obligations between a lessor (who owns equipment) and a lessee (to whom the lease gives certain rights to possess and use the equipment). This program provides a simple lease for use in two situations: First, where the equipment will be leased for a monthly rental and perhaps sold to the party who leases the equipment; and second, where the equipment will be leased (or "borrowed") for only a short period of time.

It's Legal does not offer all variations that could be used in a lease, but it does offer the basic provisions, along with the most frequently used options.

Additional paragraphs can be added to cover unique situations. An attorney should be consulted if you have any legal questions. You should also consult with a tax professional regarding the possible tax consequences of your lease.

For more information, see:
EQUIPMENT LEASE PAYMENTS
EQUIPMENT SECURITY DEPOSIT
FINANCIAL DOCUMENTS

Equipment Lease Payments

The obligation to make lease payments can be stated in either of two ways. First, a rate can be based on the amount of usage; this option may work best if the total amount owed will be determined after the leased equipment is returned. Second, if the total amount to be paid is known at the beginning of the lease and if the lease will be for a longer period of time, the lease payment can be stated as a "total amount owed", with a requirement to make periodic payments.

For more information, see:
EQUIPMENT LEASE
EQUIPMENT SECURITY DEPOSIT

Equipment Security Deposit

An equipment security deposit may be required (i) to provide for the possibility that the lessee will return damaged equipment, or (ii) as a means of collecting all or a significant portion of the lease payment, in cases where the total amount owed will not be determined until the equipment is returned.

For more information, see:
EQUIPMENT LEASE
EQUIPMENT LEASE PAYMENTS

License Agreement

A License Agreement is a document under which one party (the "Licensor") grants another party (the "Licensee") the right to use certain property. For example, the right to "use" may be the right to "use" the Licensor's trademark on the Licensee's product, or it may be the right to "sell" or "distribute" the Licensor's software.

The License Agreement provided by It's Legal is a simple but flexible document that provides a variety of optional paragraphs. If your situation presents unusual circumstances, or if you have any legal questions, it is advisable to consult with an attorney.

For more information, see:

ARBITRATION - LICENSE AGREEMENT
DEFAULTS - LICENSE AGREEMENT
FINANCIAL DOCUMENTS
FREE-FORM PARAGRAPH
GENERAL PROVISIONS - LICENSE AGREEMENT
GRANT OF LICENSE
MODIFICATIONS - LICENSE AGREEMENT
PAYMENT OF ROYALTY
RECORDS - LICENSE AGREEMENT
SIGNING THE LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT
TRANSFER OF RIGHTS - LICENSE AGREEMENT
WARRANTIES - LICENSE AGREEMENT

Grant of License

The Licensor either owns the licensed property outright or owns the right to license the property to others. Under the License Agreement, the Licensor then grants the Licensee either an "exclusive" or "non-exclusive" license to use the licensed property. The grant is "exclusive" if only the Licensee (and not other third parties) will have the license. The grant is "non-exclusive" if the Licensor also makes similar grants to other parties. For example, a screen printer who owns the "exclusive" right to print the "University of Iowa" logo on T-shirts may grant "non-exclusive" licenses to several marketers or retailers to sell such T-shirts.

For more information, see:
DEFAULTS - LICENSE AGREEMENT
FREE-FORM PARAGRAPH
LICENSE AGREEMENT
PAYMENT OF ROYALTY
RECORDS - LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT

Payment of Royalty

Usually the Licensor charges the Licensee a fee (royalty payment) in connection with the use of the licensed property. For example, the fee may be a "one-time" payment that is paid at the time of the signing of the agreement, or it may be payable in installments. As an alternative, the fee may be based on the number of times that the Licensee uses or sells copies of the licensed property.

For more information, see:
DEFAULTS - LICENSE AGREEMENT
FREE-FORM PARAGRAPH
GRANT OF LICENSE
LICENSE AGREEMENT
RECORDS - LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT

Records - License Agreement

A Records paragraph requires the Licensee to maintain records and allows the Licensor to inspect the records by giving notice to the Licensee. This paragraph is important to the Licensor if a royalty will be charged and if the royalty is based on the number of copies of the licensed property that are sold. The right to inspect allows the Licensor to check on whether the royalty is being calculated properly.

For more information, see:
DEFAULTS - LICENSE AGREEMENT
FREE-FORM PARAGRAPH
GRANT OF LICENSE
LICENSE AGREEMENT
PAYMENT OF ROYALTY
TERMINATION - LICENSE AGREEMENT

Modifications - License Agreement

The Licensor may not want the licensed property to be modified in any manner, for example, with the use of a logo. In many cases, the Licensor may be willing to include a phrase that allows modifications if the Licensor's consent has been obtained.

For more information, see:
LICENSE AGREEMENT

Defaults - License Agreement

The Licensor will want to make sure that this provision is included. If the agreement requires a royalty payment, it is recommended that the optional phrase "including the obligation to make a royalty payment" be included. The Licensee will want to include the optional provision that allows the Licensee to "cure" the default by taking corrective action prior to the end of the specified notice period.

For more information, see:
FREE-FORM PARAGRAPH
GRANT OF LICENSE
LICENSE AGREEMENT
PAYMENT OF ROYALTY
RECORDS - LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT

Arbitration - License Agreement

If the parties cannot resolve differences between them on a mutually acceptable basis, the parties may be forced to resort to a lawsuit to settle such issues. Arbitration may be a less expensive process that avoids the court system. It is a process under which the parties submit their dispute to a neutral party (arbitrator) who gathers information, listens to the arguments, and makes a decision.

For more information, see:
GENERAL PROVISIONS - LICENSE AGREEMENT
LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT

Warranties - License Agreement

Generally, the Licensor makes no warranties regarding the licensed product, although in some cases the Licensor may be willing to provide at least some type of "money-back" guaranty for a thirty day period. This type of guaranty could be added as a part of the "free-form" license agreement paragraph, but should be done only after consulting with an attorney.

For more information, see:
FREE-FORM PARAGRAPH
LICENSE AGREEMENT

Transfer of Rights - License Agreement

This paragraph explains the effect of the License Agreement on parties who become "successors" to the parties. For example, if the Licensee "sells" or "transfers" its rights under the agreement to a third party, that third party becomes bound under the agreement. The second part of this provision allows the user to include a sentence that prohibits such transfers, unless the other party consents. In the above example, the Licensee would not be able to "sell" or "transfer" its rights to a third party, unless the Licensor's consent was obtained.

For more information, see:
GENERAL PROVISIONS - LICENSE AGREEMENT
LICENSE AGREEMENT

Termination - License Agreement

A termination paragraph is an important provision. If disputes arise and it seems too costly to resolve the issues through arbitration or the court system, being able to terminate the agreement upon 30 days notice may be a way to resolve the situation. Please note that both options can be used. For example, a "one-year" agreement can be made by marking the second option and picking a date for automatic termination that is one year after the date that the agreement is made. In addition, the parties can provide for earlier termination by also choosing the first option, and allowing the parties to terminate by giving a specified amount of notice, perhaps 60 or 90 days.

For more information, see:
ARBITRATION - LICENSE AGREEMENT
DEFAULTS - LICENSE AGREEMENT
FREE-FORM PARAGRAPH
GENERAL PROVISIONS - LICENSE AGREEMENT
GRANT OF LICENSE
LICENSE AGREEMENT
PAYMENT OF ROYALTY
RECORDS - LICENSE AGREEMENT

General Provisions - License Agreement

A License Agreement should include provisions that (i) make it clear that the agreement contains the entire agreement of the parties, (ii) require changes to the agreement to be in writing, signed by both parties, (iii) protect the agreement if one of its provisions is unenforceable, (iv) specify the effect of a party's failure to always strictly enforce the terms of the agreement, and (v) specify which state's laws will govern disputes between the parties.

For more information, see:
ARBITRATION - LICENSE AGREEMENT
DEFAULTS - LICENSE AGREEMENT
LICENSE AGREEMENT
SIGNING THE LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT
TRANSFER OF RIGHTS - LICENSE AGREEMENT

Signing the License Agreement

The License Agreement should be signed by both parties, and becomes effective as of the date entered as the "effective date" in the opening paragraph of the agreement.

For more information, see:
ARBITRATION - LICENSE AGREEMENT
DEFAULTS - LICENSE AGREEMENT
GENERAL PROVISIONS - LICENSE AGREEMENT
LICENSE AGREEMENT
TERMINATION - LICENSE AGREEMENT
TRANSFER OF RIGHTS - LICENSE AGREEMENT

Promissory Note

A Promissory Note is a written document that specifies the terms, rights, and obligations that apply to a loan. The party making the loan is the "payee" and the party borrowing the loan funds is the "promisor". The note includes provisions regarding the amount of the loan, the interest rate, the date by which the loan must be repaid, and the amount of the payments. It may also include other provisions that are important in enforcing the payment of the note.

This program permits a wide variety of payback options, including the use of a balloon payment. In addition, the program provides an amortization table based on your selection of monthly, quarterly, semi-annual, or annual payments. You may also select a variety of optional paragraphs.

The first section of the Promissory Note document is a "financial worksheet". This worksheet can be used to enter the basic financial information and to choose whether the note will be paid:

- "on demand" (i.e., payable immediately at the request of the payee),

- "in full on a specific date" (i.e., no monthly payments; rather, all of the principal and interest will be due on a future date that is specified in the note),

- "in installments of interest only" (e.g., interest will be due on a quarterly or monthly basis, but the principal will not be due until a future date that is specified in the note"),

- "in installments of interest and principal" (e.g., interest and principal will be due in regular payments similar to monthly mortgage payments).

This basic information is then automatically transferred into the text of the note. This transferred information can be seen at sections 2 (Promisor Information) and 4 (Payment Terms) of this program.

For more information, see:
ACCELERATION
AMORTIZATION
ASSIGNMENT
COSTS
DEFAULT RATE
DISCOUNT
EVENTS OF DEFAULT
FINANCIAL CALCULATOR & BALLOON PAYMENT
FINANCIAL DOCUMENTS
GENERAL PROVISIONS - NOTE
GUARANTY
LATE CHARGE
LIFE INSURANCE
PREPAYMENT
SECURITY AGREEMENTS
SIGNING THE PROMISSORY NOTE

Financial Calculator and Balloon Payment

If the promissory note will be repaid in "installments of interest and principal", a financial calculator is available as part of the first section to assist with the calculation of the payment amount. Further, the user can play "what if" by changing other variables (i.e., interest rate, principal amount, and payment frequency) to determine how such changes would affect the amount of the payment. For example, the monthly payment will automatically increase if the interest rate is increased. The information from the calculator is automatically transferred to the appropriate section of the note.

The calculator also allows for the possibility of a "balloon payment". For example, the promisor wants to borrow $10,000 at 8% for 5 years, but the monthly payments of $202.76 are too high. As an alternative, the monthly payment can be changed arbitrarily to $175.00. The calculator then computes a "balloon" payment of $2,040.01 which is due at the end of the 5 years and "makes up" for the decreased monthly payments. In this illustration, 60 monthly payments of $202.76 equal total interest and principal paid of $12,165.60, while 59 payments of $175.00, plus 1 "balloon payment" of $2,040.01 equal total interest and principal paid of $12,365.01. The reason for the difference is that the lower monthly payments of $175.00 do not reduce the principal balance very quickly, and therefore, more interest is paid over the life of the five year loan.

For more information, see:
AMORTIZATION
PROMISSORY NOTE

Amortization

An amortization schedule is a schedule of principal and interest payments for a promissory note, mortgage, or other type of debt. The term "amortization" means to repay a loan in equal installments over a period of time. Each periodic payment (usually a monthly payment) includes principal and interest -- the initial payments include higher amounts of interest and as the principal amount is gradually reduced, the monthly payments include more principal and less interest.

For more information, see:
FINANCIAL CALCULATOR & BALLOON PAYMENT
PROMISSORY NOTE

Default Rate

If the promisor fails to pay off the note on or before the due date, it is common to assess a higher rate of interest that becomes effective as of the due date. This higher "default rate" provides an incentive for the promisor to pay the note when due, and if the promisor fails to do so, provides some additional compensation to the payee. The following example provides an illustration.

> Rose (as the promisor) signs a promissory note with Ed which includes the following terms: principal amount -- $5,000; interest rate -- 7%; and due date -- February 23, 1995. The note also includes a stated default rate of 10%. This higher rate provides an incentive for Rose to pay off the note by the due date. If she does not, Ed is entitled to interest at 10% on the unpaid balance, with the higher rate going into effect on February 23, 1995.

For more information, see:
ACCELERATION
DISCOUNT
LATE CHARGE
PREPAYMENT
PROMISSORY NOTE

Late Charge

As a negative incentive to encourage the promisor to make required payments when due, the "late charge" provision can be included. This provision requires the promisor to pay a fixed dollar amount if an installment is not paid by its due date. This option is designed to be used if the note will require installment payments of principal and interest or installment payments of interest only. It is not intended to be used in notes that are "due on demand" or "in full on a specific date".

This option can be used in conjunction with both the "late charge" and "discount" options.

For more information, see:
ACCELERATION
DEFAULT RATE
DISCOUNT
PREPAYMENT
PROMISSORY NOTE

Discount

A "discount" provision can be used as a "positive" incentive to encourage the promisor to pay off the note early. This option is not a commonly used provision, probably because the discount has the effect of reducing the amount of interest earned.

For more information, see:
ACCELERATION
DEFAULT RATE
LATE CHARGE
PREPAYMENT
PROMISSORY NOTE

Acceleration

An "acceleration" provision allows the payee to demand immediate payment of an entire loan balance, including payments otherwise due at a future time, if a promisor defaults under a promissory note. For example, if Scott (the promisor) has paid two required monthly payments under a note that will run for 5 years, and if he then stops making payments when due, Mary (the payee) can then "accelerate" payment of the note by demanding payment of the remaining principal balance plus accrued interest. ("Accrued interest" is interest that has accumulated, but has not been paid.)

For more information, see:
DEFAULT RATE
DISCOUNT
LATE CHARGE
PREPAYMENT
PROMISSORY NOTE

Costs

Promissory notes usually include a "costs" provision which obligates the promisor to pay the payee's collection costs, if the promisor defaults in paying the note. For example, if Gary (the promisor) fails to pay a $10,000 note to Carroll (the payee) on the due date, and if Carroll has to hire a lawyer to start a lawsuit to collect the note, Gary can be required to pay the cost of the lawsuit including Carroll's attorney fees.

For more information, see:
EVENTS OF DEFAULT
GENERAL PROVISIONS - NOTE
LIFE INSURANCE
PROMISSORY NOTE
SECURITY AGREEMENTS

Prepayment

A "prepayment" provision allows the promisor to prepay the note without penalty. This provision is beneficial to the promisor who may wish to reduce interest charges by paying off the note early. Compare this provision with the "discount" provision.

For more information, see:
ACCELERATION
DEFAULT RATE
DISCOUNT
LATE CHARGE
PROMISSORY NOTE

Events of Default

A "default" is the failure to do something required by a contract, note, lease, or other legal agreement. Often a promissory note lists "events of default"; usually these "events" are events that may impair the promisor's ability to repay the note. Because these events threaten the promisor's repayment ability, the payee is allowed to demand immediate payment of the entire note if an "event of default" occurs.

For more information, see:
COSTS
GENERAL PROVISIONS - NOTE
LIFE INSURANCE
PROMISSORY NOTE
SECURITY AGREEMENTS

Security Agreements

A security agreement is a document that is often used in a business setting under which the promisor pledges property to assure payment of the promissory note. If the promisor fails to make payments on the note, the security agreement usually gives the payee the right to have the pledged property sold to pay off the note. It is very important to note that the payee may be required to take additional steps under local law to make sure that the payee's claim against the pledged property has priority in the case of default. These additional steps may be complicated and it is advisable to consult an attorney if a security agreement will be used.

For more information, see:
COSTS
EVENTS OF DEFAULT
GENERAL PROVISIONS - NOTE
LIFE INSURANCE
PROMISSORY NOTE

Life Insurance

A "life insurance" provision is sometimes required by commercial lenders in connection with home loans and auto loans. It can be included so that funds (the life insurance death proceeds) will be available to pay off the note, if the promisor dies before the note is fully repaid. If this provision is included, the payee may wish to make sure that the life insurance proceeds will be payable directly to the payee.

For more information, see:
COSTS
EVENTS OF DEFAULT
GENERAL PROVISIONS - NOTE
PROMISSORY NOTE
SECURITY AGREEMENTS

General Provisions - Note

The "general provisions" for the promissory note include standard provisions that assist the payee in enforcing payment of the note by the promisor.

Signing the Promissory Note

The promissory note should be signed by the promisor; the payee's signature is not required. In addition, the "date" and the city and state where the note was signed should be entered at the time of the signing.

Assignment

The "assignment" option can be included to allow the payee to transfer (sell) his or her right to receive the loan payments from the promisor. For example, the payee may assign his or her rights to collect the note payments to a bank. The bank probably would not pay full value to the payee because of the usual risk that the promisor may not make all of the note payments.

For more information, see:
GUARANTY
PROMISSORY NOTE
SIGNING THE PROMISSORY NOTE

Guaranty

A "guaranty" provision can be included so that a "guarantor" becomes obligated to repay the promissory note for the promisor, if the promisor defaults by not making payment of the note. Obviously, the guarantor, perhaps a third party friend or relative of the promisor, does not become liable unless the guarantor signs the "guaranty" section of the note.

For more information, see:
ASSIGNMENT
PROMISSORY NOTE
SIGNING THE PROMISSORY NOTE

General Receipt

A receipt is an acknowledgement in writing that something of value (money or property) has been placed into the possession of another individual. This document provides various receipt forms. The receipt should be signed and dated by the recipient of the money or property. The original receipt should go to the person making the payment, or delivering an item. A copy of the receipt should be retained by the recipient.

For more information, see:
RECEIPT OPTIONS

Receipt Options

The program offers several options to customize the receipt for the type of item being delivered. Unique provisions applicable to the payment of money, receipt of property and the receipt of documents are presented.

A cash receipt is an acknowledgement in writing that cash (or a cash equivalent) has been paid without reciting either party's obligations to the other. To increase the usefulness of this general receipt form, options are presented to include the discharge of an obligation by the paying party. Thus the obligation is "satisfied" by the receipt of the appropriate payment. Another option is presented for the acceptance of less than full payment as complete satisfaction of the obligation. This is called an "accord and satisfaction."

The property receipt provides documentation that certain items were delivered, and includes options for delivery of goods pursuant to a purchase order, including the condition and acceptance of such goods. Other options include the value of the property delivered, the condition of the property, and a disclaimer of responsibility for any damage to the property.

Receipts are also used to acknowledge the delivery of documents or other written or printed materials, especially those of a type which are difficult or expensive to replace. Thus the person delivering a document to another business or individual has a record that the documents were in fact delivered, and the date of such delivery.

For more information, see:
GENERAL RECEIPT

Health Care Documents

An "advance directive" is a document signed by a competent adult (a "Declarant") in advance of a serious illness or accident, in which the Declarant provides directions regarding health care that should (or should not) be provided to the Declarant if the Declarant is unable to communicate his or her wishes. It's Legal provides the following advance directive documents for use in making health care decisions.

* Living Will - a document under which a Declarant states his or her wishes regarding medical care that should be withheld or withdrawn if the Declarant's death is expected to occur soon, or perhaps if the Declarant is in a permanent coma.

* Health Care Power of Attorney - a much broader document than a Living Will, because (i) it covers any health care decision, and (ii) the Declarant (or Principal) is permitted to designate a person whom the Declarant trusts (an "Agent") who will have authority to make any health care decisions on behalf of the Declarant, if the Declarant (or Principal) is unable to make and communicate such decisions.

* Advance Health Care Directive - a document that combines the best features of the Living Will and Health Care Power of Attorney, and provides additional options.

* Revocations for these documents are also provided.

If a state statute provides a "sample" Living Will and/or Health Care Power of Attorney form, It's Legal offers that state's particular form(s), along with additional optional provisions that the user may wish to include.

It's Legal offers the Advance Health Care Directive document as a "generic" form that combines the best features of the Living Will and Health Care Power of Attorney documents of the various states. Although the Advance Health Care Directive document does not follow the word-for-word terminology of any particular state's form(s), this document is offered as a unique document that complies with the encouragement of the U.S. Supreme Court for individuals to state their preferences for health care in accordance with their own specific wishes. If you have specific legal questions, it is recommended that you contact an attorney who is familiar with your state's statutes regarding advance directives.

For more information, see:
ADVANCE HEALTH CARE DIRECTIVE
AGENT
ANATOMICAL GIFTS
ARTIFICIAL NUTRITION HYDRATION
AUTOPSY
DURABLE POWER OF ATTORNEY
GUARDIAN OR CONSERVATOR
HEALTH CARE POWER OF ATTORNEY
HOLD HARMLESS
LIFE SUSTAINING PROCEDURES
LIVING WILL
MICHIGAN - PATIENT ADVOCATE ACCEPTANCE
MISSISSIPPI - DISCLOSURE STATEMENT
NOTARY
OKLAHOMA - ATTORNEY GENERAL OPINION
OTHER REQUESTS

Living Will

A Living Will is a document under which a competent adult (a "Declarant"), prior to becoming unconscious or incompetent, declares his or her intention that certain procedures (sometimes referred to as "life sustaining procedures") should be withheld or withdrawn under specified circumstances. The program allows you (the Declarant) to state:

* whether life sustaining procedures should be withdrawn or withheld so that you can die naturally if you have a "terminal condition", or are in a "permanent coma";

* whether "artificial nutrition/hydration" should be provided to you if you have a "terminal condition" or are in a "permanent coma";

* what effect shall be given to the Living Will if you are pregnant; and

* other provisions that limit or expand the document provisions offered by this program (for example, provisions regarding access to medical records, authority to perform an autopsy, anatomical gifts, or even the location of your health care, such as residency in a nursing home).

As the Declarant you are also permitted to designate a specific person (an "Agent") to make health care decisions on your behalf when you are unable to do so (if your state's laws permit such a designation).

NOTE: Many states provide sample Living Will forms as part of their statutes that authorize Living Wills. This program provides the appropriate sample form for each state, if one has been specified. In addition, the user is allowed to customize the form by adding optional provisions.

Although a Living Will document has been executed, you (as the Declarant) retain the right to give current medical directions to physicians and other providers of health care services as long as you are able to do so. This document only becomes effective when you do not have the capacity to give, withdraw or withhold informed consent regarding your health care. The documentation of your wishes and desires in an advance directive is encouraged because it provides guidance to your health care providers regarding your wishes.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
HEALTH CARE DOCUMENTS
LIFE SUSTAINING PROCEDURES
OKLAHOMA - ATTORNEY GENERAL OPINION
PREGNANCY
SEVERABILITY
TERMINAL CONDITION
VIRGINIA-HEALTH CARE DECISIONS ACT

Health Care Power of Attorney

A Health Care Power of Attorney is a document under which a competent adult (a "Principal"), prior to becoming unconscious or incompetent:

* Declares his or her intention that certain procedures (sometimes referred to as "life-sustaining procedures") should be withheld or withdrawn under specified circumstances (in a manner similar to a Living Will); and

* Designates a person (an "Agent") who will have authority to make health care decisions on behalf of the Declarant, if the Declarant is unconscious, incompetent or otherwise unable to make such decisions.

You (as the Principal) can grant extensive authority to your Agent to act on your behalf. This authority may include the authority to make any type of health care decision. In contrast, a Living Will only address life sustaining procedures. The following examples illustrate the broad powers that you can include in a Health Care Power of Attorney. The program allows you to state:

* whether life sustaining procedures should be withdrawn or withheld so that you can die naturally if you have a "terminal condition", or are in a "permanent coma";

* whether "artificial nutrition/hydration" should be provided to you if you have a "terminal condition", or are in a "permanent coma"; and

* other provisions that limit or expand the provisions offered by this program (for example, provisions regarding access to medical records, authority to perform an autopsy, anatomical gifts, or even the location of your health care, such as residency in a nursing home).

NOTE: Many states provide sample Health Care Power of Attorney forms as part of their statutes that authorize such documents. This program provides the appropriate sample form for each state, if one has been specified. In addition, the user is allowed to customize the form by adding optional provisions.

Although a Health Care Power of Attorney document has been executed, you (as the Principal) retain the right to give current medical directions to physicians and other providers of health care services as long as you are able to do so. This document only becomes effective when you do not have the capacity to give, withdraw or withhold informed consent regarding your health care. The documentation of your wishes and desires in this type of document in encouraged because it provides guidance to your health care providers and your Agent regarding your wishes.

Durable Power of Attorney. The Health Care Power of Attorney is a "durable" power of attorney because the document is effective during any period of time that the Declarant is not competent.

For more information, see:
AGENT
ANATOMICAL GIFTS
COPIES
DURABLE POWER OF ATTORNEY
HEALTH CARE DOCUMENTS
LIFE SUSTAINING PROCEDURES
VIRGINIA-HEALTH CARE DECISIONS ACT

Advance Health Care Directive

Most states have statutes that authorize advance directives, in the form of Living Will and/or Health Care Power of Attorney documents. Typically, the statutes provide sample forms. It's Legal offers the Advance Health Care Directive as a "generic" form that combines the best features of the Living Will and Health Care Power of Attorney documents of the various states. Under the Advance Health Care Directive, a competent adult (a "Declarant"), prior to becoming unconscious or incompetent:

* Declares his or her intention that certain procedures (sometimes referred to as "life-sustaining procedures") should be withheld or withdrawn under specified circumstances (in a manner similar to a Living Will or a Health Care Power of Attorney); and

* Designates a person (an "Agent") who will have authority to make health care decisions on behalf of the Declarant, if the Declarant is unconscious, incompetent or otherwise unable to make such decisions (in a manner similar to a Health Care Power of Attorney).

The program allows you (as the Declarant) to provide guidelines for your Agent in making health care decisions for you. For example, the program allows you to state:

* whether life sustaining procedures should be withdrawn or withheld so that you can die naturally if you have a "terminal condition", or are in a "permanent coma";

* whether "artificial nutrition/hydration" should be provided to you if you have a "terminal condition", or are in a "permanent coma";

* What procedures (e.g., chemotherapy, kidney dialysis, cardiopulmonary resuscitation, use of a respirator) you do or do not wish to receive;

* Whether you have made arrangements to make "anatomical gifts");

* what effect shall be given to your Advance Health Care Directive if you are pregnant ("pregnancy"); and

* other provisions that limit or expand the document provisions offered by this program (for example, provisions regarding access to medical records, authority to perform an autopsy, or even the location of your health care, such as residency in a nursing home).

Although an Advance Health Care Directive has been executed, you (as the Declarant) retain the right to give current medical directions to physicians and other providers of medical services as long as you are able to do so. This document only becomes effective when you do not have the capacity to give, withdraw or withhold informed consent regarding your health care. The documentation of your wishes and desires in this type of document in encouraged because it provides guidance to your health care providers and your Agent regarding your wishes.

Durable Power of Attorney. The Advance Health Care Directive is "durable" because the document is effective during any period of time that the Declarant is not competent.

Warning. Although the Advance Health Care Directive document does not follow the "word-for-word" terminology of any particular state's form(s), this document is offered as a unique document that complies

with the encouragement of the U.S. Supreme Court for individuals to state their preferences for health care in accordance with their own specific wishes. The states of CALIFORNIA, OREGON, RHODE ISLAND and WISCONSIN require the use of their respective state specific forms; these forms are offered as part of It's Legal's "Living Will" and "Health Care Power of Attorney" documents. In addition, the states of NEVADA, NEW HAMPSHIRE, OHIO, SOUTH CAROLINA, TENNESSEE, TEXAS, AND VERMONT have unique statutory requirements regarding the form of advance directives. The NORTH DAKOTA statute provides that the form provided in its statute is the "preferred form". KENTUCKY and OREGON have adopted specific advance directive forms which are separate documents in the It's Legal menu. The conservative approach is to use the respective state specific forms for those states, although it is expected that the United State Supreme Court would require these states to honor the wishes of an individual as reflected in It's Legal's Advance Health Care Directive.

If you have specific legal questions, it is recommended that you contact an attorney who is familiar with your state's statutes regarding advance directives. You are encouraged to review the "Health Care Documents" section of this guide. Further, the "Severability" section of the Advance Health Care Directive document and the "Severability" section of this guide provide important protection to the user of this document.

For more information, see:
AGENT
ANATOMICAL GIFTS
ARTIFICIAL NUTRITION/HYDRATION
AUTOPSY
DURABLE POWER OF ATTORNEY
GUARDIAN OR CONSERVATOR
HEALTH CARE DOCUMENTS
HEALTH CARE POWER OF ATTORNEY
HOLD HARMLESS
LIFE SUSTAINING PROCEDURES
LIVING WILL
MICHIGAN - PATIENT ADVOCATE ACCEPTANCE
MISSISSIPPI - DISCLOSURE STATEMENT
NOTARY
OKLAHOMA - ATTORNEY GENERAL OPINION
OTHER REQUESTS
PERMANENT COMA
PREGNANCY
REVOCATION
SAMPLE PROVISIONS
SEVERABILITY
SIGNATURES - ADVANCE DIRECTIVE
SPECIFIC MEDICAL PROCEDURES
TERMINAL CONDITION
VIRGINIA - HEALTH CARE DECISIONS ACT
WITNESSES

Agent

An "Agent" is a person who is authorized legally to act on behalf of another person or entity. In the context of an advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive), an Agent is a person who is authorized by the Declarant (the person who will sign the advance directive) to make health care decisions on behalf of the Declarant, if the Declarant is unable to do so. Some statutes refer to the Agent as an "Attorney-in-Fact", "Health Care Agent", "Health Care Proxy", "Health Care Representative", "Patient Advocate", "Proxy" or "Surrogate".

The person that you (as the Declarant) designate as the Agent should be someone you know and trust. The statutes of most states require that the Agent be an adult. In addition, under most circumstances, your Agent cannot be your health care provider (e.g. a physician, a nurse, an employee, officer, director, or operator of a home health agency, hospital, nursing home or residential care facility), unless that person is related to you. Thus, in selecting an Agent, you should not designate a person who is (or may become) directly involved in providing health care to you, unless that person is your spouse or a family member.

Generally, an Agent has broad authority to make almost any decision regarding the Declarant's health care, if the Declarant is unconscious or otherwise unable to communicate his or her wishes. However, as the Declarant (or Principal), you may limit your Agent's authority by including guidelines in the advance directive that specify your wishes. For example, your Agent would not have the authority to override a stated desire in your Advance Health Care Directive not to receive kidney dialysis.

It is not possible to anticipate all of the health care decisions that may be required. If the advance directive does not provide specific direction regarding a particular health care decision that must be made, your Agent must act in your best interests. Unless you state otherwise, your Agent has the same authority to make decisions about your health care as you would have. Your Agent is not liable for health care decisions made in good faith. You should discuss your wishes, values and preferences regarding your health care with your Agent so that your Agent is best able to make decisions in accordance with your wishes.

It is advisable to designate an alternate Agent to provide for the possibility that your Agent will be unwilling, unable or ineligible to act as your Agent. For example, many states automatically revoke a spouse's authority to act as Agent if the couple is separated or divorced. Any alternate Agent has the same authority to make health care decisions as the original Agent.

Living Will Warning. Not all states have statutes that specifically state whether an Agent may be designated in a Living Will. Although it is reasonable to believe that this "silence" does not prohibit the designation of an Agent, this program offers the option of choosing an Agent only for the following states which specifically authorize the designation of an Agent in their Living Will statutes: Arkansas, Delaware, Florida, Hawaii, Idaho, Indiana, Louisiana, Maine, Minnesota, Montana, Nevada, New Jersey, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, and Wyoming. For all other states it is recommended that the user use the Advance Health Care Directive or Health Care Power of Attorney documents offered by It's Legal.

Minnesota Living Wills. For Minnesota users, if the Proxy provisions in the Living Will are not selected by the user, the Proxy provisions are still printed "in blank" in the document to show that the Proxy option was presented, but not selected.

For more information, see:

COPIES
HEALTH CARE POWER OF ATTORNEY
REVOCATION

Durable Power of Attorney

Under a "durable" power of attorney document, an Agent's authority to act on behalf of the Declarant generally becomes effective upon the Declarant's disability or mental incompetence, and continues during such period of disability or mental incompetence. If the Agent's authority continues to be effective despite the Declarant's disability or mental incompetence, the power of attorney document is said to be "durable". The Health Care Power of Attorney and Advance Health Care Directive documents included in It's Legal are special forms of power of attorney documents, and both are "durable". They are durable because the Agent has authority to make health care decisions for the Declarant (or Principal) during any period of time that the Declarant is not competent. See the "Signatures - Advance Directive" section of the guide for more information regarding "competency".

A few states limit the period for which a Health Care Power of Attorney is effective. For example, in Oregon, it is effective for only seven (7) years.

The Advance Health Care Directive allows you (as the Declarant) to state when the Agent's authority will become effective. In addition, It's Legal offers significant flexibility for you to state how the determination of incompetency will be made.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
LIVING WILL
WILLS AND TRUSTS

Terminal Condition

A "terminal condition" is a progressive, incurable or irreversible condition that is expected to cause death within a relatively short period of time, unless life-sustaining procedures are used. The adjectives "incurable" and "irreversible" are used to indicate that there will be no "recovery" from the condition by means of a cure, treatment of symptoms, or otherwise significantly retarding the deteriorating health condition. The term "relatively short period of time" provides flexibility to the health care providers who, at best, can only provide an estimate of when death will occur as a result of the condition and other health factors.

It may be helpful to compare the information in this "Termination Condition" section with the information in the "Permanent Coma" section.

For more information, see:
ADVANCE HEALTH CARE DIRECTIVE
AGENT
ANATOMICAL GIFTS
ARTIFICIAL NUTRITION HYDRATION
AUTOPSY
DURABLE POWER OF ATTORNEY
GUARDIAN OR CONSERVATOR
HEALTH CARE DOCUMENTS
HEALTH CARE POWER OF ATTORNEY
HOLD HARMLESS
LIFE SUSTAINING PROCEDURES
LIVING WILL
MICHIGAN - PATIENT ADVOCATE ACCEPTANCE
MISSISSIPPI - DISCLOSURE STATEMENT
NOTARY
OKLAHOMA - ATTORNEY GENERAL OPINION
OTHER REQUESTS
PERMANENT COMA
PREGNANCY
REVOCATION
SAMPLE PROVISIONS
SEVERABILITY
SIGNATURES - ADVANCE DIRECTIVE
SPECIFIC MEDICAL PROCEDURES
VIRGINIA - HEALTH CARE DECISIONS ACT
WITNESSES

Permanent Coma

The term "permanent coma" generally means a lasting condition, indefinite and without change, in which thought, awareness of self and environment, and all other indicia of consciousness are absent. Sometimes this condition is described as a "coma", an "irreversible coma", being "persistently unconscious", being "permanently unconscious", or a "persistent vegetative state" from which there is no known hope of recovery.

Prior to 1989, most state statutes clearly provided that an advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive) was applicable if the Declarant was terminally ill. However, most of these statutes were silent on the question of whether an advance directive could also apply if the Declarant was in a permanent coma. In a U.S. Supreme Court case decided in 1989, a clear indication was given that a Declarant should be free to state that his or her advance directive should also apply if the Declarant is in a permanent coma, if that is the Declarant's desire. In response, many states amended their statutes to provide guidance to persons who wanted to clearly specify that their advance directives should apply if they were in a permanent coma.

It may be helpful to compare the information in this "Permanent Coma" topic with the information in the "Terminal Condition" topic.

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Life Sustaining Procedures

Most states have a specific definition of "life sustaining procedures". Generally, a life sustaining procedure means any medical procedure or intervention that (i) uses mechanical or other artificial means to sustain, restore, or supplant a vital function, and (ii) only prolongs the moment of death.

Some states use other terms, including "life-prolonging procedures", "death-delaying procedures", "death-prolonging procedures", "medical maintenance treatment", and "extraordinary procedures" for life sustaining procedures.

Please refer to the "Terminal Condition", "Permanent Coma" and "Artificial Nutrition/Hydration" guide topics for a better understanding of these related topics.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
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Artificial Nutrition/Hydration

The term "artificial nutrition/hydration" generally means food and water that is provided to a person through an artificial means such as "feeding tubes", "tube feeding" or "intravenously", rather than through the mouth. Because food and water is such a basic necessity to life itself, there have been concerns in the past as to whether a person should be permitted to request that food and water not be provided, even if the food and water was provided by an artificial means. A U.S. Supreme Court case decided in 1989 makes it clear that a person can state his or her preference not to receive artificially administered food and water.

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Specific Medical Procedures

Many states suggest that "other" specific directions of the Declarant can be included in an advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive). For example, you (the Declarant) may wish to specifically state that you do (or do not) want to receive certain types of treatment, for example, cardiac resuscitation, mechanical respiration, surgery, diagnostic tests that involve limited surgical procedures, chemotherapy, or other medications that have painful or unpleasant side effects.

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Pregnancy

Many states have provisions that specify to what extent an advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive) is effective during any period that the Declarant is pregnant. These statutes generally fall into three categories: (i) the advance directive has no effect during the Declarant's pregnancy, (ii) the advance directive has no effect if the fetus could develop to live birth if life sustaining procedures are continued, or (iii) the statute is silent on the pregnancy question.

The U.S. Supreme Court has held that a woman may choose to have an abortion, at least during the first part of the pregnancy. If a woman has the right to decide to have an abortion, it seems consistent to expect that a woman could also choose to withhold or withdraw medical treatment even though a result of that decision might be that the fetus might not survive. Therefore, statutes that limit the effect of an advance directive during pregnancy may be unconstitutional because of their infringement on a woman's right to make decisions regarding her body.

It's Legal offers optional provisions regarding pregnancy with respect to the Living Will and Advance Health Care Directive documents. Maximum flexibility is offered by allowing the user to state a preference regarding the effect of the advance directive during pregnancy, even though that stated preference may differ from the user's state statute. For example, the Alabama Living Will statute provides that a Living Will shall have no effect during pregnancy. This program allows the user to state, as a preference, that the Living Will should be given effect if it is determined that the fetus could not survive, even if life sustaining procedures are continued.

The following states have statutes that provide that an advance directive has no effect during a pregnancy of the Declarant or Principal: Alabama, California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Kansas, Kentucky, Mississippi, Missouri, New Hampshire, Oklahoma, South Carolina, Texas, Utah, Washington, Wisconsin, and Wyoming. In Michigan, treatment may not be withheld or withdrawn from a pregnant Declarant or Principal if it will result in the death of the Declarant or Principal.

The following states have statutes that provide that an advance directive has no effect if the fetus could develop to live birth if life-sustaining procedures are continued: Alaska, Arizona, Arkansas, Colorado, Georgia, Illinois, Iowa, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, and South Dakota.

The following states do not indicate what effect a pregnancy will have on the effectiveness of an advance directive: District of Columbia, Florida, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Tennessee, Vermont, Virginia, and West Virginia.

One state, New Jersey, specifically provides that a Declarant or Principal may state in an advance directive what effect a pregnancy will have on the advance directive.

Although specific "pregnancy" options are not offered in the Health Care Power of Attorney document, the user may choose to include a statement regarding pregnancy as an "Other Request". Because the Health Care Power of Attorney is intended generally to apply to any health care decision (unless specifically limited), a statement regarding pregnancy should be written so that it applies only to the Agent's decisions regarding life sustaining procedures during a pregnancy. Generally, a Principal would not want a pregnancy clause that restricted the Agent's authority with respect to health care decisions that did not involve the withholding or withdrawal of life-sustaining procedures.

For more information, see:

Anatomical Gifts

The term "anatomical gifts" refers to the designation of the intent to donate a vital organ, or part or all of a human body, effective after the Declarant's death, generally for transplant or medical research. Most states have adopted the Uniform Anatomical Gift Act which authorizes such gifts after death. The advance directive statutes of a few states include sample Living Will or Health Care Power of Attorney forms that have "anatomical gifts" or "donation of organs" sections that refer to the intent of the Declarant to make an anatomical gift. It's Legal offers this provision in the Advance Health Care Directive, as well as the Living Will and Health Care Power of Attorney documents for the states that specifically include an "anatomical gifts" section in their sample forms.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
AUTOPSY

Autopsy (Memorial Services)

An "autopsy" is an examination of the body after death by a medical expert, usually conducted to determine the cause(s) of death. Except for deaths that appear to have occurred under suspicious circumstances, government officials generally do not have the authority to conduct an autopsy, unless the consent of the dead person's legal representative (e.g., an executor or surviving spouse) is obtained. Please refer to the "Donation/Anatomical Gifts" topic of the guide for related information.

For more information, see:
DONATION/ANATOMICAL GIFTS
MEMORIAL SERVICES

Autopsy

An "autopsy" is an examination of the body after death by a medical expert, usually conducted to determine the cause(s) of death. Except for deaths that appear to have occurred under suspicious circumstances, the government officials generally do not have the authority to conduct an autopsy, unless the consent of the dead person's legal representative (e.g., an executor or surviving spouse) is obtained. The advance directive statutes of a few states include sample living will or health care power of attorney forms that have provisions regarding the Declarant's consent to an autopsy. It's Legal offers an "autopsy" option in the Advance Health Care Directive so that you (as the Declarant) can state your wishes regarding your consent to an autopsy. Please refer to the Anatomical Gifts topic of the guide for related information.

For more information, see:
ANATOMICAL GIFTS
ADVANCE HEALTH CARE DIRECTIVE

Other Requests

You (as the Declarant or Principal) may also choose to include a statement regarding religious or moral beliefs. If you include other provisions, it is recommended that these provisions be stated as preferences. For example, you could begin the provision with the phrase "It is my preference that . . ."

An important related guide topic is the "Specific Medical Procedures" topic.

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Guardian or Conservator

A "guardian or conservator of the person" is a person who is appointed by a court to make decisions for the general welfare of a person (often called a "ward"), if the court has determined that the ward is no longer competent to make such decisions on his or her own behalf. The authority of a guardian or conservator to make decisions for the "general welfare" of a ward probably includes the power to make at least some kinds of health care decisions.

It's Legal offers a "guardian nomination" option in the Advance Health Care Directive so that you (as the Declarant) can nominate your choice of a person who would become your guardian or conservator, if that became necessary. In many cases, the person named as the Agent in the Advance Health Care Directive would be the logical choice to serve as the guardian. See also the "Signatures - Advance Directives" guide topic.

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Hold Harmless

A "hold harmless" provision provides protection to the health care providers and other persons (possibly an Agent) who carry out the wishes of the Declarant (or Principal) under an advance directive. This type of protection encourages such persons to honor the wishes of the Declarant.

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Severability

The severability paragraph provides some protection against the possibility that an entire advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive) might be declared invalid simply because state law does not permit a specific provision that was included in the advance directive. For example, it is possible that you could choose to add an unusual "other" provision that would not be enforceable. If that occurred, the inclusion of the severability paragraph would provide protection against the possibility that the unusual provision would cause the entire advance directive to be invalid.

The U.S. Supreme Court has made it clear that all persons should be free to state their preferences in advance directives. Thus, if your wishes are stated as preferences, the risk should be limited to the possibility that your preference would simply not be followed if state law somehow did not permit what you requested. You are not risking that the other provisions of your advance directive could be held invalid simply because the state has decided that your preference cannot be followed. The following example illustrates this point.

Some states have not yet responded to recent changes in health law that clearly permit a person to include additional specific provisions in an advance directive. For example, some states have not yet amended their advance directive statutes to make it clear that a person can (i) request that life sustaining procedures be withheld or withdrawn if the person is in a permanent coma, (ii) request that artificial hydration/nutrition be withheld or withdrawn, (iii) specify a preference regarding the effect of a pregnancy, or (iv) appoint an agent to make health care decisions for the Declarant. Although it is believed that each person has the right to include provisions regarding the above matters, a severability paragraph provides protection against the possibility that the inclusion of one of these provisions would cause the other provisions of the advance directive to be invalid.

For more information, see:
HEALTH CARE POWER OF ATTORNEY
LIVING WILL
PREGNANCY

Signatures - Advance Directive

The advance directive documents (Living Will, Health Care Power of Attorney, or Advance Health Care Directive) include lines for the signature of the Declarant (or Principal) and the date that the document is signed. In some cases, the date appears both at the beginning of the document and at the signature line. The advance directive should be reviewed at time that it is signed to make sure that all date lines and signature lines have been completed.

With respect to the Living Will and Health Care Power of Attorney documents for some states, the selection of the Declarant (or Principal) regarding the use of artificial nutrition and hydration and/or other matters might require initials or an additional signature. The Living Will and Health Care Power of Attorney documents should be reviewed carefully to make sure that other required signature or "initial" lines are signed or initialed.

It is important that you (the Declarant or Principal) discuss your advance directive with your physician or other health care providers before you sign it to be sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with another health care provider, an attorney, social worker or pastor, who is knowledgeable about these issues and can answer your questions.

Competent or Competency. "Competency" is the mental ability to understand the general effect of a transaction or document. Generally, every adult is presumed to be competent to execute an advance directive. However, if an individual has a court appointed guardian or conservator, or has been determined incompetent, you should consult an attorney who is familiar with your state's laws regarding competency and advance directives to obtain advice regarding the appropriate method of making health care decisions for such a person.

Copies. After the advance directive has been signed, dated, and witnessed or notarized as appropriate, you (as the Declarant or Principal) should provide copies of the advance directive to your physician or other health care providers, your Agent and alternate Agent (if any), family members, and significant other persons in your life. In addition, you may wish to provide copies to your local hospital, and possibly a member of the clergy. It is helpful to indicate in the document itself who has received copies. If you are served by a home health care agency or admitted to any type of health care facility, a copy of this document should be included in your medical record.

Patient Self Determination Act. Hospitals and other health care providers are now required under the Patient Self Determination Act to provide patients with information regarding the rights of patients to make their own health care decisions, including the right to accept or refuse medical treatment.

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Witnesses

There are restrictions on who may be a witness to the execution of an advance directive (Living Will, Health Care Power of Attorney, or Advance Health Care Directive). The restrictions are included in the statement that precedes the signatures of the witnesses. The witness requirements should be carefully reviewed prior to the execution of the advance directive. IF THE ADVANCE DIRECTIVE IS NOT WITNESSED PROPERLY BY QUALIFIED WITNESSES, IT MAY NOT BE ENFORCEABLE.

It may be helpful to also review the "Notary" topic in this guide.

For more information, see:
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Notary

A few states require that the signatures of the Declarant (or Principal) and/or the witnesses be notarized. In other states, witnesses are not needed if the signature of the Declarant (Principal) is notarized. It's Legal provides (or does not provide) a notary section in accordance with the requirements of the appropriate state.

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Revocation

It is possible to revoke an advance directive (Living Will, Health Care Power of Attorney or Advance Health Care Directive) after it has been made by executing a new advance directive or by using the revocation document provided by It's Legal. Many states specify that an advance directive may be revoked at any time and in any manner. However, the best method is to provide a signed and dated, written revocation to the Agent (if any) and the appropriate health care providers. Although other documents require a witness or notary, legal principles encourage the recognition of a revocation without the necessity of such formalities. IN MANY STATES, THE REVOCATION DOCUMENT MAY BE CONSIDERED INEFFECTIVE UNTIL YOUR AGENT AND/OR PHYSICIAN HAVE BEEN NOTIFIED OF THE REVOCATION.

For more information, see:
ADVANCE HEALTH CARE DIRECTIVE
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Sample Provisions

Several states include "statutory" document forms as part of their Health Care Power of Attorney acts that must be used and SHALL be the only form by which a person may execute a Power of Attorney for Health Care. For this reason, It's Legal has not included suggested language for certain provisions that the state form has left blank. However, the following sample provisions are provided for your reference in composing your own statement of desires.

* I specifically direct my Agent to follow any "Declaration" to Physicians (Living Will) executed by me.

* I do not want my life to be prolonged nor do I want life sustaining procedures to be provided or continued if my Agent believes the burdens of the treatment outweigh the expected benefits. I want my Agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life sustaining procedures.

* I do not want my life to be prolonged and I do not want life sustaining procedures, except to the extent deemed necessary to provide me with comfort care, if I have a condition that is incurable or irreversible and, without the administration of life sustaining procedures, expected to result in death within a relatively short time, or if I am in a coma or persistent vegetative state which is reasonably concluded to be irreversible.

* I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have for recovery, or the cost of the procedures.

For more information, see:
HEALTH CARE POWER OF ATTORNEY

Oklahoma - Attorney General Opinion

In 1992, the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act was adopted. This Act provides for an advance directive which may include a living will, an appointment of a health care proxy, or both. Please select the Oklahoma version of It's Legal's Living Will document in order to complete an "Advance Directive for Health Care".

For more information, see:
HEALTH CARE POWER OF ATTORNEY
LIVING WILL

Virginia - Health Care Decisions Act

Virginia enacted a Health Care Decisions Act in 1992 which sets forth a suggested form that incorporated the provisions of both a Living Will and Health Care Power of Attorney. Please select the Virginia Living Will to make an "Advance Medical Directive."

For more information, see:

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Michigan - Patient Advocate Acceptance

The Michigan Durable Power of Attorney for Health Care Act (the "Michigan Act") provides that before a Patient Advocate (a term for "Agent") may act for the Declarant, two conditions must be satisfied:

1. A copy of the document must be given to the proposed Patient Advocate. If the proposed Patient Advocate is unable to serve, a copy must be given to the Successor Patient Advocate.

2. The Patient Advocate must sign an acceptance of the designation, or if the proposed Patient Advocate is unable to serve, the Successor Patient Advocate must sign an acceptance of the designation.

The Declarant will not be in a position to assure that these two conditions are satisfied at the time that the authority is needed, because by definition the Declarant is unable to make decisions. Therefore, the acceptance of the designation as required by the Michigan Act has been included in the Advance Directive for Declarants residing in the state of Michigan.

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Mississippi - Disclosure Statement

The Mississippi Durable Power of Attorney for Health Care Act (the "Mississippi Act") states that provides that in order for an Agent to make health care decisions for the Declarant, the document must "substantially comply" with the Act. The notice to persons executing this document is set forth in the Mississippi Act, and is included in the Advance Directive for Declarants residing in the state of Mississippi.

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Copies

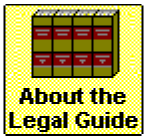
You should keep a copy of this document after you have signed it. Give a copy to the person you name as your Agent, your Alternate Agent, your physician or other health care provider, and family members. It is helpful to indicate in the document itself who has received copies. If you are served by a home health care agency or admitted to any type of health care facility, a copy of this document should be included in your medical record.

For more information, see:
HEALTH CARE DOCUMENTS

Virginia - Health Care Decisions Act

Virginia enacted a Health Care Decisions Act in 1992 which sets forth a suggested form that incorporated the provisions of both a Living Will and Health Care Power of Attorney. Please select the Virginia Living Will to make an "Advance Medical Directive."

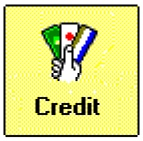
About the Legal Guide

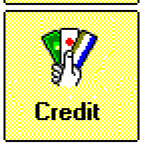


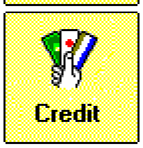
The Expert Legal Help guide contained in It's Legal gives you information about the program's legal documents and offers guidance concerning use of program features to solve legal questions.

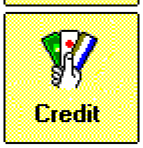
Expert Legal Help can be accessed from any location in the program by pressing [CTRL+F1].   When in Expert Legal Help, you can move to other topics by following the on-screen prompts.

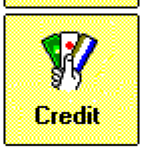
For more information, see:

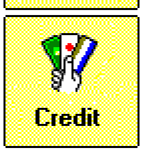


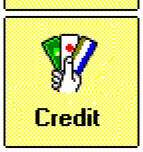


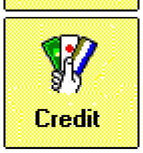


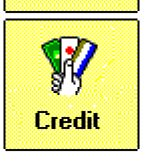













Credit


Credit


Credit


Credit


Credit


Credit

Supplemental Documents

It's Legal gives you one miscellaneous document that you may find useful. It is called "Exhibit". This document enables you to customize information, such as a legal description for real property or a product description in a document format which can then be attached to other documents you have prepared.

For more information, see:
EXHIBIT
ABOUT THE LEGAL GUIDE

Exhibit

An Exhibit is a document you can use to supplement other documents that refer to legal descriptions or other information which are lengthy and better handled in a separate item attached to a document, may exist as part of another document that is referred to in the text of a document, or refer to existing information that can be attached to the document. Some of the documents in It's Legal which contain a reference to an exhibit are the "Demand for Money Owed", "Equipment Lease", and "Power of Attorney" as well as documents related to real estate transactions.

For more information, see:
DEMAND FOR MONEY OWED
EQUIPMENT LEASE
SUPPLEMENTAL DOCUMENTS
REAL ESTATE DOCUMENTS
POWER OF ATTORNEY DOCUMENTS

Power of Attorney Documents

A Power of Attorney is a document under which a person (a "Grantor") gives another person or entity (an "Attorney-in-Fact" or "Agent") powers to act on his or her behalf. It's Legal provides both general and special power of attorney documents, along with a temporary guardianship document, and a revocation of power of attorney document.

In addition, It's Legal provides a specialized power of attorney document that is related to health care which is called a "Health Care Power of Attorney".

For more information, see:
AGENT PROVISIONS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
ABOUT THE LEGAL GUIDE
POWER OF ATTORNEY
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT
CHILD CARE DOCUMENTS

Power of Attorney

A General Power of Attorney is a document under which a person (a "Grantor") authorizes another person or entity (an "Attorney-in-Fact" or "Agent") to act on his or her behalf in a variety of situations. In contrast, a Special Power of Attorney is a document under which a Grantor authorizes an Agent to act on his or her behalf in specific situations only.

A Grantor signs a Power of Attorney document so that the Agent will be able to handle the Grantor's affairs during a period of time when the Grantor is unavailable or unable to do so. An Agent is not required to be a lawyer.

For more information, see:

AGENT PROVISIONS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT
CHILD CARE DOCUMENTS

Successor Agent

There is always the possibility that the Agent will not be able to serve or may be unwilling to serve. For example, an elderly husband, as Grantor, may name his elderly wife as the Agent. Subsequent to the signing, they both are diagnosed as having Alzheimer's disease. Now, the wife is no longer mentally competent, and therefore, cannot serve as the Agent. Further, the husband is also mentally incompetent, and therefore, he cannot sign a new power of attorney. Designating a successor agent in the original power of attorney might have prevented this problem.

For more information, see:
AGENT PROVISIONS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
CHILD CARE DOCUMENTS

General Powers

A general power of attorney is very broad and provides extensive powers. A general statement is included which gives the Agent "full power and authority" to act on behalf of the Grantor. The document then lists certain powers to make it clear that the Grantor intended to grant such broad powers.

Broad powers include powers to:

- Handle banking transactions;
- Enter safety deposit boxes;
- Handle transactions involving U.S. securities;
- Buy and sell property;
- Purchase life insurance;
- Settle claims;
- Enter into contracts;
- Exercise stock rights;
- Buy, manage, or sell real estate;
- File tax returns; and
- Handle matters related to government benefits.

In addition, optional powers include powers to:

- Maintain and operate business interests;
- Employ professional assistance;
- Make gifts;
- Make transfers to revocable ("living") trusts; and
- "Disclaim interests" (this power can be an important estate planning tool that helps avoid estate taxes).

If providing broad powers is not desirable, perhaps a Special Power of Attorney which can be limited in scope would be more appropriate. The above powers are all offered as "options" in developing a Special Power of Attorney document.

For more information, see:
AGENT PROVISIONS
EFFECTIVE DATE/DURABILITY
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT
CHILD CARE DOCUMENTS

Interpretation of POA

The intent of a General Power of Attorney is to permit the Agent to take any action on behalf of the Grantor; the listing of specific powers should not be interpreted as meaning that the Agent's powers are limited only to the listed powers. On the other hand, a Special Power of Attorney should be interpreted as allowing an Agent full authority with respect only to the powers as listed in the document.

For more information, see:
AGENT PROVISIONS
CHILD CARE DOCUMENTS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT

Agent Provisions

Generally, an Agent is only held liable for intentional misconduct. This protection is designed to encourage Agents to accept the responsibility of being an Agent.

Often Agents serve without compensation. It is advisable for the Grantor to state his or her preference in the document to avoid questions at a later time when the Grantor is no longer able to state his or her intentions. For example, a family member may serve as Agent during the Grantor's lifetime, and then to the dismay of the rest of the family after the Grantor's death, the Agent makes a claim against the Grantor's estate for more than mere "love and affection".

Requiring the Agent to provide accountings helps ensure that the Agent is carrying out his or her duties in a responsible manner.

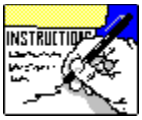
For more information, see:
CHILD CARE DOCUMENTS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT

Effective Date/Durability

It's Legal offers flexibility in allowing the Grantor to specify when the document becomes effective and when its effectiveness terminates. In addition, both the General and Special Power of Attorney documents can be made "durable". Under English law on which American law is based, power of attorney documents STOPPED being effective if the Grantor became mentally incompetent; this was intended to protect the Grantor from inappropriate actions that might be taken by the Agent without the Grantor's ability to respond. However, most Grantors are willing to take this risk because the possibility of the Grantor becoming incompetent is a primary reason for desiring the power of attorney. In fact, many Grantors do not want the power of attorney to become effective UNTIL they become mentally incompetent. American law has responded to this desire by allowing Grantors to specify that the power of attorney (i) "shall not be affected by my disability or lack of mental competence", or (ii) shall become effective "upon written certification . . . that I am disabled or lack sufficient mental competence". Thus, such power of attorney documents are said to be "durable", that is the power granted under the document survives the fact that the Grantor has become mentally incompetent.

For more information, see:
AGENT PROVISIONS
CHILD CARE DOCUMENTS
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT

Signing the Power of Attorney



A power of attorney is not legally binding, unless the Grantor is mentally competent at the time of the signing of the document. If there is any question regarding the Grantor's mental competence, it may be advisable to obtain a physician's written opinion that the Grantor understands the document and the consequences of signing the document. It is also advisable to review such issues with an attorney.

Four states (Florida, North Dakota, Ohio, and South Carolina) require that the power of attorney be signed in the presence of witnesses. In all states, including the states that require witnesses, the signatures on the power of attorney should be notarized.

In some states, the name of the person who prepared the power of attorney document must be indicated in the document as a requirement for recording the document. Most power of attorney documents are not recorded, but it may be required if the Agent handles real estate transactions for the Grantor. It's Legal provides the option of including the name of the preparer.

For more information, see:
AGENT PROVISIONS
CHILD CARE DOCUMENTS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
REVOCATION OF POWER OF ATTORNEY
SUCCESSOR AGENT

Child Care Documents

It's Legal offers three documents that may be useful in providing authority to "caretakers" of your children, including baby-sitters, school officials, and other persons with whom you may wish to provide temporary custody. In some cases, you may wish to use all three documents. For other situations, it may be more appropriate to use only one or two.

The "Child Care Authorization" is used to grant some other person or institution (a "caretaker") temporary custody of your children. For example, if you will be separated from your children for a few days, you may wish to grant certain powers (regarding your child's basic needs, including medical, nutritional and educational needs) to a relative, friend or other person who will be taking care of your children. Similarly, a "Child Care Authorization" may be needed to provide your child's teacher, school or other organization with appropriate authority to take your child on a field trip or other outing. You may name more than one caretaker (for example, a husband and wife).

The "Letter to School" provides notice to school officials regarding the identity of the caretaker(s) and the scope of the authority granted to the caretaker(s). It is important to understand that the Letter to School does not provide the grant of authority to the caretaker(s); it simply provides notice to the school officials. The Child Care Authorization provides the authority to the caretaker(s).

The "Child Care Instructions" document provides important phone numbers, medical information, and special instructions to baby-sitters, day care providers, and other "caretakers" who will have responsibility for child care on a short-term basis. This document is less formal than the Child Care Authorization and does not grant specific powers to the caretaker (which can be accomplished by using the Child Care Authorization).

For more information, see:
POWER OF ATTORNEY DOCUMENTS

Revocation of Power of Attorney

When the conditions that necessitated the granting of a Power of Attorney change, it may become necessary to revoke the powers granted. The Revocation of Power of Attorney is a document under which a person (a "Grantor") revokes a Power of Attorney, whether general or special, that previously authorized another person (an "Agent" or "Attorney-in-Fact") to act on the Grantor's behalf. A copy of this document MUST be presented to the Agent as evidence of the Grantor's intent to revoke the Power of Attorney.

For more information, see:
AGENT PROVISIONS
CHILD CARE DOCUMENTS
EFFECTIVE DATE/DURABILITY
GENERAL POWERS
INTERPRETATION OF POA
POWER OF ATTORNEY
POWER OF ATTORNEY DOCUMENTS
SIGNING THE POWER OF ATTORNEY
SUCCESSOR AGENT

Real Estate Documents

It's Legal provides various documents which are useful in the purchase, sale or leasing of real property. For example, It's Legal contains several worksheets which provide guidance in evaluating and making an offer to purchase real property. Other documents include leases for residential and/or commercial property.

For more information, see:
HOME EVALUATION WORKSHEET
HOME PURCHASE WORKSHEET
OTHER REAL ESTATE DOCUMENTS
HOME SALE WORKSHEET
REAL ESTATE LEASE
RENTAL APPLICATION
RENTER'S INSPECTION WORKSHEET

Rental Application Process

Landlords want to be sure to rent to good tenants who will take good care of the premises and make timely rental payments. Following an application procedure requires time, patience and persistence.

Pre-qualify applicants. For example, ask about the beginning date of occupancy, advise applicants as to the amount of deposit required, the number of occupants, ask whether they have pets, and whether they have a waterbed. Don't reveal your criteria to the prospective tenant. Rather, ask open-ended questions such as, "Do you have any pets?" If the tenant does not satisfy your initial criteria, there is no need to even complete an application or take the time to show the premises.

Have all prospective tenants who satisfy the initial criteria complete an application form. The landlord is not obligated to rent to the first applicant. Please refer to the guide topic "Discrimination" for an explanation of a related matter. Indicate that you will be taking applications over the next few days, verifying employment, credit and references, and will let the applicant know of your decision. Write the reasons for rejection on the back of the Application form and keep it for at least three (3) years as evidence of your fair rental practices.

Some of the information on the application may appear irrelevant, but is good information if you need to collect rent or delinquent rent. Review the Application as if you were trying to collect a judgment for delinquent rent. If the Tenant does not have stable employment or any assets to attach, how can they pay rent?

By requiring a deposit with the application you can determine whether the tenant is serious. The amount can be fairly small if you are trying to eliminate curious applicants. However, a deposit with an application may be more inconvenience than the landlord desires at this early stage. If you reject an applicant, they may have mistakenly assumed that you were holding the unit for them. This type of misunderstanding may be avoided by not taking deposit with the application.

After completing the application, ask the applicant for some form of identification. Driver's license, credit card, passport, or military ID. Otherwise you have no way of knowing if the person whose name is on the application and the references are actually those of the prospective tenant! Also verify the identification with information given on the Application - social security number, driver's license number, current address. Ask for an explanation of anything that does not match. Make a note of the explanation, and then decide for yourself if you believe the explanation.

If an Applicant does not meet your criteria, be sure to document the basis of your decision. The best approach with the Applicant is to be honest, direct, and polite. And don't budge from your predetermined criteria despite an appeal from the Applicant. Outbursts from Applicants may be indicative of a reluctance to follow rules or guidelines. Enduring a small amount of unpleasantness at the time of rejection may save you from having to cope with an unsuitable tenant in the future.

Before you accept an Applicant as a tenant, review your rules and policies with them to avoid any misunderstandings. For example, deposits, rent payment, late payment fees, guests, parties, quiet hours, parking, utilities, garbage, pets, waterbeds, hanging things on walls, changing locks, painting, maintenance, emergencies, widow breakage, drain stoppages, lockouts, insurance, and how much notice you require if they plan to vacate the premises.

Let your potential tenants have an accurate understanding of what they can expect from you as their landlord, from other tenants (if any) and what you expect from them. After you explain the rules and

expectations, ask the tenants for their agreement. Also, complete the "Rental Inspection Checklist" to confirm the condition of the premises at the time they are rented.

Once the lease has been signed, do not accept a personal check for deposits or the first month's rent. Only accept cash, money orders or cashier's checks. Do not provide a key or allow a tenant to move in (even a "few things") until you have been paid the full amount requested. Provide a receipt for whatever money is paid. Receipt books are available at office supply stores.

For more information, see:
CO-SIGNER
CREDIT REFERENCES
DISCRIMINATION
EMPLOYMENT VERIFICATION
REFERENCE VERIFICATION

Reference Verification

If landlords do not check references, there is no way of knowing if the information given on the Application is true. Check with the prior landlord and verify the employment at a minimum.

Be careful; unscrupulous Applicants can have a friend impersonate the current landlord. When verifying references over the phone, don't indicate that the Applicant has given the reference as a landlord. Rather tell that person they have been given as a reference, and ask them how they are acquainted with the Applicant. The friend might think this is a personal reference and give away their ruse. Indicate that your rental unit is substantially higher (or lower) than the prior rental amount given on the application. The landlord should be able to tell you the correct rental amount.

Typical questions to ask the current landlord include:

1. Current rent payment amount.
2. How long has the Applicant been a tenant?
3. How many times has the Applicant been late with the rent?
4. Have you had any complaints from neighbors regarding the Applicant?
5. Is the Applicant presentable? Cooperative?
6. Why is the Applicant moving?
7. Would you rent to this person again in the future?

What if the current landlord is anxious to have the tenants move, and is willing to say anything to get rid of them? Compare the reasons given by the Applicant with the reasons given by the Landlord. If you have any suspicions, check with the prior landlord -- that person has no interest in whether the tenants stay or move.

Also, landlords may be reluctant to give out any information. Tell them you are not asking for a good or bad recommendation, just basic information. Verify as much factual information with a reluctant landlord as you can. For example, the amount of rent and how long the Applicant has been a tenant.

For more information, see:
APPLICATION PROCESS
CO-SIGNER
CREDIT REFERENCES
DISCRIMINATION
EMPLOYMENT VERIFICATION

Employment Verification

Verify the fact of employment, length of employment and income. Smaller employers are more likely to verify information over the telephone because the employer personally knows the Applicant and wants to assist the employee in obtaining housing. If the employer is reluctant, you can ask questions that will require a simple "yes" or "no" response. For example, "Jim Johnson would like to rent a house from me. On his application he said he worked for your firm for three years. Is that correct?" "Jim indicated that he makes approximately $35,000 a year. Is that correct?" You might also try calling the Applicant's immediate supervisor.

If the employer is reluctant to confirm any information over the telephone, you can use a form letter to request employment verification. It is a good idea to have a serious Applicant complete and sign verification forms at the time the application is taken. The possibility of receiving a response is increased if you enclose a self-addressed, stamped envelope for the employer to return the verification. The "It's Legal" program offers verification form letters.

For more information, see:
APPLICATION PROCESS
CO-SIGNER
CREDIT REFERENCES
DISCRIMINATION
REFERENCE VERIFICATION

Credit References

If you feel comfortable with the current landlord's recommendation, and the Applicant's employment situation, you may not want to pursue credit references. But a little time and effort spent before ever renting a unit may save frustration in collecting rent or even eviction proceedings. You may establish criteria and check credit references in certain instances. (For example, if the portion of the Applicant's income that will be paid towards rent exceeds a certain percentage (e.g. more than a third), or if there is a substantial increase in the new rent over the prior rent.)

Most financial institutions will not provide account information over the telephone. Some merchants with customer charge accounts may release credit references. The best approach is to have the Applicant complete Credit Verification forms at the time the rental application is taken. The letter must be signed by the Applicant. Be sure to include a self-addressed, stamped envelope when sending the form to the appropriate financial institution. The "It's Legal" program offers a credit verification form letter.

Some landlord groups belong to a credit reporting agency which provides its members with economical credit checking privileges. Dealing directly with a credit reporting agency can be rather expensive.

When a credit report is a factor in turning down an application, the Federal Fair Credit Reporting Act requires that the reasons and the name and address of the credit reporting agency must be given to the applicant.

If an investigative report is made of the applicant's personal life, the applicant has the right to be informed, upon request, of the scope and nature of the report. An investigative consumer report is a special credit report with more detail than a routine report. It includes information about the applicant's character, general reputation, and personal characteristics. It may also include information from interviews with neighbors, friends, or associates, and information concerning the applicant's credit standing, and driving habits and record.

For more information, see:
APPLICATION PROCESS
CO-SIGNER
DISCRIMINATION
EMPLOYMENT VERIFICATION
REFERENCE VERIFICATION

Co-Signer

You may wish to require a co-signer if a potential tenant is just beginning a job, and has not established a credit history, and you want to give the person a chance (for example, an employed person who has lived with relatives, and now wants a place of her own). To protect yourself in such a situation, a financially responsible person should co-sign the lease in case your initial instincts about the tenant are incorrect.

The same information should be requested from the co-signer as the Applicant. Be as careful checking the references of the co-signer as an Applicant. You may have to rely on the co-signer's financial ability to pay the rent or any delinquencies. Once you have assured yourself of the co-signer's employment and credit references, be sure to have the co-signer actually sign the lease or a co-signer agreement.

For more information, see:
APPLICATION PROCESS
CREDIT REFERENCES
DISCRIMINATION
EMPLOYMENT VERIFICATION
REFERENCE VERIFICATION

Discrimination

You are not required to rent to the first person who expresses an interest in the rental unit. The purpose for refusing to rent, though, must be based on a permissible purpose. And the purpose of the rental application process is to determine, through permissible factors, to the best of your ability, whether a tenant is an acceptable renter.

Do not discriminate against an applicant on the basis of an illegal purpose: race, color, religion, sex, national origin, age or disability. Such discrimination AS THE SOLE BASIS OF REFUSAL TO RENT is illegal throughout the United States. You many call the U.S. Department of Housing and Urban Development (HUD) at 1-800-424-8590 to ask questions about discrimination.

State laws or local ordinances may provide additional classes which are protected from discrimination, such as marital status, sexual orientation, source of income, family responsibilities, or student status. Call your state's consumer protection office or the local department of housing to determine if any additional classes are protected in your locale.

You may discriminate on a tenant's ability to pay, pets, waterbeds, number of occupants, honesty, permanence, or other criteria required of all tenants. Establish your standards for a particular rental unit. For example:

Gross income: Four times rental amount
Employment: At least six months in current position
Credit: No negative reports
Rent: No late payments to prior landlord
Pets: None
Smoking: No
Waterbed: One queen size
Vehicles: Two
References: Two good personal references
Occupants: Three
Permanency: At least one year in last two rental units
Appearance: Clean; average apparel

If marital status is a protected class in your locale, consider the following points. If two adults are prospective tenants, each should qualify for your rental guidelines, because either one could end up being your sole tenant. Because you cannot discriminate on the basis of marital status, you cannot separate the income of an unmarried couple, but combine the income of a married couple. Or you can take your risks and aggregate the income of both applicants, whether married or not married. The key is that your standards are the same whether the couple is married or not.

For more information, see:
APPLICATION PROCESS
CO-SIGNER
CREDIT REFERENCES
EMPLOYMENT VERIFICATION
REFERENCE VERIFICATION

Home Purchase Worksheet

The Home Purchase Worksheet is a worksheet designed to assist a buyer with the purchase of a personal residence. The worksheet leads the buyer through a section that allows the buyer to state his or her preferences, including preferences as to price, location, style and size of the residence.

For buyers who expect to finance a portion of the purchase price with a lender, the worksheet also analyzes the buyer's cash flow and net worth. The program then uses these factors to calculate estimates of the optimal purchase price and a suggested mortgage payment. In addition, the buyer can enter the loan terms (e.g., interest rate, loan amount, number of years, "points") proposed by various lenders and the program compares the loan terms to determine which proposal offers the most economical terms.

The worksheet also offers a closing costs schedule to track the various costs that will be included as part of the purchase of the residence, including loan fees, credit reports, commissions, title fees, property taxes, insurance, and recording costs. A progress chart allows the buyer to monitor the progress of the real estate agent and the lender.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCE
CLOSING COSTS
CREDIT HISTORY
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART
REAL ESTATE DOCUMENTS

Buyer's Preferences

Perhaps the most important factor in determining the buyer's choice of a residence is the purchase price. This factor affects the amount of cash that the buyer must pay at the closing, as well as the monthly payment if the buyer will be obtaining financing from a lender. Other sections of the Home Purchase Worksheet provide additional guidance regarding the purchase price and the amount of financing that may be available to the buyer.

Other important preferences include location, lot size, residence size, architectural style, and specific features of the residence. An experienced real estate agent may be able to explain whether the stated preferences are feasible in light of the preferred price range. The agent may also be able to work with the buyer in identifying which of the preferences are the most expensive, and therefore, could be modified to make the preferred purchase price more feasible.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART

Buyer's Cash Flow

The Buyer's Cash Flow section helps the buyer who expects to obtain third party financing to identify how much cash the buyer will have available to make monthly mortgage payments. More monthly income available to make mortgage payments means that a higher purchase price is more affordable. Of course, the size of the mortgage payment is also dependent on the interest rate and the period of time over which the loan funds are repaid. A lower interest rate on a loan repaid over a longer period of time results in a lower mortgage payment, assuming that the same size of loan is obtained.

Under the "Monthly Income" section, all of the buyer's income should be listed. This section requires that all items of income be stated as a monthly amount. Therefore, items of income that are received on some other basis will need to be adjusted to reflect a monthly amount. For example, a buyer who is self-employed will need to first estimate his or her annual income and then divide the annual income by 12 to obtain a monthly amount.

All loan payments should be included in the loan payments section, including the loan payments, if any, related to a current residence. However, the loan payments on a mortgage related to a current residence are listed as "memo info only", and such payments are not included in the "Total Loan Payments" amount. The reason is because it is expected that a loan on a current residence will be paid in full if a new residence is purchased. Similarly, in the "Monthly Expenses" section rent payments, property taxes, and property insurance are not included in the "Total Monthly Expenses" on the assumption that such items will be included as part of a monthly mortgage payment on a new residence. Although a mortgage payment is technically the repayment of only the loan, many lenders also collect an additional amount each month as an "escrow payment" that is then used to pay the property taxes and insurance premiums as such items become due.

The amount included as the monthly payment on a credit card account should only include the interest, plus the amount by which the balance from the prior month will actually be reduced. In other words, the monthly payment amount should not include the portion of the monthly payment, if any, that simply represents payment of the current month charges. Payment of the current month charges will be included in the various expense categories.

> Example. Mary has a credit card with a current balance of $1,000. Her monthly payment for the purposes of this program should only include:
>
> - the average amount that she expects to pay as monthly interest, perhaps $12, plus,
>
> - the average amount that she intends to pay each month to reduce her outstanding balance below $1,000.

If she intends to reduce her current balance to $880 over the next 12 months, her monthly payment for the purposes of this program would include $12 per month in interest, plus $10 per month in principal reduction for a total of $22 per month. She would not include amounts that she might make during the year to pay new charges on the account.

All of the buyer's monthly expenses (including new charges to credit card accounts) should be included in the "Monthly Expenses" section. This may require some estimation and guess work, depending on how well the buyer maintains records. Even if the buyer does not maintain such records, it may be useful to complete this section as a budgeting process. If the "Net Monthly Cash Flow" at the end of the section is not high enough to support an adequate monthly mortgage payment, perhaps additional cash flow can be

generated by adopting a more stringent budget.

For more information, see:
BORROWING ABILITY
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART

Borrowing Ability

Lenders and real estate agents use several tests to provide estimates of (i) the maximum purchase price that the buyer should pay for the residence, (ii) the maximum mortgage payment that the buyer should consider, (iii) the total amount of loan payments that the Buyer's income will support, and (iv) the amount of the Buyer's income that should be reserved for monthly expenses, including income and FICA (social security) taxes.

These tests are based on averages and the experience of lenders, and should only be used as estimates. A lender will also take into consideration other factors, including expectations regarding future increases in the buyer's income, the buyer's credit history, evidence that the buyer spends less than the "average" 64 percent of gross monthly income on monthly expenses, and the buyer's net worth.

For more information, see:
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART

Buyer's Net Worth

While the buyer's cash flow is a very important factor to a lender (along with the buyer's credit history and the value of the residence) in determining the amount of the loan, the buyer's net worth is important also. It can be expected that the lender's loan application will require the buyer to disclose the buyer's assets, liabilities and net worth. A significant amount of net worth may help overcome a weaker level of cash flow. The net worth section in this program is intended to provide a summary for the buyer's use in determining the amount of the buyer's net worth. It does not attempt to provide the detail that the lender will require; the level of detail varies depending on the lender and the forms that the lender will require.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART

Credit History

A lender will generally request a credit report regarding the buyer's credit history. A credit report will show the buyer's payment history with respect to credit cards, car loans, other loans, and other types of credit. It may also show judgments that have been obtained against the buyer, as well as any bankruptcy proceedings in which the buyer has been the debtor. If a buyer's history includes unfavorable items, it may be helpful for the buyer to explain the circumstances.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
HOME PURCHASE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART

Loan Terms

The "Loan Terms" section provides a convenient format to list the relevant information regarding actual or expected loan terms that may be offered by the lender. This Loan Terms section provides the information for the "Loan Comparison" section which compares the terms of different offers.

A lender may be a bank, credit union, savings and loan association, or other lending institution. In addition, the lender may be the seller. In some transactions, sometimes known as "contract" sales, the seller provides the financing for the buyer by requiring a down payment and allowing the buyer to pay off the remaining amount over a period of time in a manner similar to making mortgage payments to a third party lender. This program can be used to compare the "contract" terms offered by a seller to the mortgage terms offered by a lender.

The important terms are usually the loan amount, the interest rate, and the number of years over which the loan will be repaid. These factors determine the amount of the mortgage payment. This program assumes that the lender will also require the buyer to pay an additional amount with the monthly payment. This additional amount will be deposited into an "escrow account". The funds in the escrow account will be used to pay the buyer's property insurance and property taxes as these items become due.

Other important terms include "points" and "closing costs". Points are additional interest. Each "point" is equal to one percent of the loan amount. In contrast to regular interest which is paid as part of the regular monthly payment, points must be paid when the loan is made (at the closing). Closing costs are the lender's charges for processing the loan. Closing costs are often stated as a percentage of the loan amount, but closing costs should not be confused with points. Points are interest which can be deducted for income tax purposes. Closing costs usually cannot be deducted.

> Example. A lender may offer a $120,000 loan, with an annual interest rate of 8.0%, and a requirement that the loan be repaid in monthly payments over 25 years. In addition, the lender may charge 2 "points" and a 2 percent fee for closing costs. In this example, both the points and the closing costs will be equal to $2,400 (2% x $120,000). However, only the $2,400 paid as points will be deductible for income tax purposes. The additional $2,400 paid for closing costs will not be deductible.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN COMPARISON
PROGRESS CHART

Loan Comparison

A buyer who is obtaining financing may be required to choose loan terms from several alternatives. This "Loan Comparison" section allows the buyer to compare various alternatives.

> Example. A lender may offer a $120,000 loan, with an annual interest rate of 8.0%, and a requirement that the loan be repaid in monthly payments over 25 years. In addition, the lender may charge 1 "point". As an alternative, the same lender (or a different lender) may be offering the same terms, except that the second alternative includes an annual interest rate of 7.5% (instead of 8.0%), but requires 2 points (instead of 1). Which alternative is better? One alternative offers a higher interest rate, but fewer points. The other alternative offers a lower interest rate, but more points.

The buyer can compare these two alternatives by entering the loan terms in the "Loan Terms" section, and then completing the "Loan Comparison" section.

It is important to note that the assumption regarding the number of "Months Until Residence Sold" can greatly influence the comparison. Generally, the longer that the residence and mortgage are held, the more favorably "a payment of more points to obtain a lower interest rate" will compare with "paying less points and accepting a higher interest rate". In other words, if the residence will be sold and the mortgage paid off in just a few years, it may be more beneficial to pay a higher interest rate and fewer points. If the residence and mortgage will be held for a longer period of time, it may be advantageous to "buy down" the interest rate by paying more points. Adjusting the number of "Months Until Residence Sold" allows you to determine at what point the two alternatives are approximately equal.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PURCHASE WORKSHEET
LOAN TERMS
PROGRESS CHART

Closing Costs

Sometimes the term "closing costs" is used to refer to all of the costs that will be paid as part of the closing, the time at which ownership of the residence changes from the seller to the buyer. In this section, the term "closing costs" excludes points paid to a lender as additional interest.

The "Closing Costs Worksheet" lists the typical closing costs that are part of a real estate closing. If the buyer will pay for the residence without obtaining financing from a lender, the amount of closing costs, and the number of items of closing costs will be less. The circumstances of each situation will dictate which items apply. While some costs are usually paid by the buyer and other costs by the seller, by agreement, the parties can allocate the closing costs in whatever manner they choose.

The allocation of property taxes between the buyer and seller can be very confusing. Generally, the parties try to allocate the taxes so that the seller is responsible for the taxes attributable to the property to the date of the closing, and the buyer is responsible for the taxes after that date. However, required dates for payment of the taxes to the appropriate governmental body will probably not coincide with the closing date. Further, in some jurisdictions, the dates for the payment of taxes do not coincide with the periods for which the taxes are attributable. For example, a tax payment due in September may be attributable to some earlier period of time. Because of the differences that can occur from one locality to another, it is advisable to review the customary practice for allocating taxes with a knowledgeable real estate agent or lender.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CREDIT HISTORY
HOME PREPARATION
HOME PURCHASE WORKSHEET
HOME SALE WORKSHEET
LOAN COMPARISON
LOAN TERMS
PROGRESS CHART
REAL ESTATE AGENTS

Progress Chart

A progress chart allows the buyer and seller to monitor the progress of the real estate agent and the buyer's lender (if applicable). After the buyer has located a suitable residence, the usual first step is to make an offer to buy to the owner of the residence (the seller). There may be one or more counter offers until either the parties stop negotiating or both agree to the terms of the offer or one of the counter offers.

After an offer (or counter offer) has been signed by both parties, it is customary for the buyer to pay "earnest money" which is deposited with a real estate agent or other third party agreeable to the buyer and seller. There is always a lapse of time from the date that the offer is signed by both parties until the closing date. The purpose of earnest money is to show the seller that the buyer is "earnest" about closing the transaction. The amount of the earnest money varies with local practice, but may be 3 percent to 10 percent of the purchase price. If the buyer refuses to complete the transaction, the buyer may be obligated to forfeit the earnest money to the seller. This can be viewed as compensating the seller for the fact that the residence was "off the market" and unavailable for sale from the date of the offer until the date that the buyer refused to complete the transaction.

It is typical for the buyer's offer to be "contingent" on one or more factors. A common contingency is the buyer's financing -- the buyer is willing to complete the transaction if the buyer is able to obtain a lender's commitment to provide financing. Other contingencies may include whether the buyer is able to sell his or her current residence (or break a lease) by a specific date. The buyer may make the offer contingent upon other factors including satisfactory professional inspections for pests or radon, or inspections of heating and cooling systems. If the contingencies cannot be met, generally, the buyer will be able to void the offer and obtain a refund of the earnest money.

For more information, see:
BORROWING ABILITY
BUYER'S CASH FLOW
BUYER'S NET WORTH
BUYER'S PREFERENCES
CLOSING COSTS
CREDIT HISTORY
HOME PREPARATION
HOME PURCHASE WORKSHEET
HOME SALE WORKSHEET
LOAN COMPARISON
LOAN TERMS
REAL ESTATE AGENTS

Home Evaluation Worksheet

The Home Evaluation Worksheet provides a convenient format for maintaining information regarding the various properties that a buyer may inspect as part of the search for a residence. The buyer can gather information regarding location, style, size, and other features of the various residences. These features can then be compared.

This worksheet also provides an important checklist regarding inspections that should be completed before closing on the purchase of the residence. These inspections include inspections of appliances, smoke detectors, security systems, and heating and cooling systems, as well as inspections for radon gas, asbestos and termites or other pests.

For more information, see:
DETAILED INSPECTION
GENERAL INSPECTION
LOCATION ANALYSIS
REAL ESTATE DOCUMENTS

General Inspection

The "General Inspection" section of the Home Evaluation Worksheet provides a format for listing the general characteristics of a specific residence. Most of the information to be listed in this section can be gathered on a routine "walk-through" inspection of the residence. There are several exceptions. Information regarding price, assessed value, the age of the residence, lot size, residence size, and property taxes will need to be obtained from the real estate agent, owner, or a local property tax official. Information regarding utilities costs should be obtained from the real estate agent or the owner.

For more information, see:
DETAILED INSPECTION
HOME EVALUATION WORKSHEET
LOCATION ANALYSIS

Location Analysis

The characteristics of the neighborhood and the proximity of the residence to a job location, school, shopping areas, and medical services may be very important in selecting a suitable residence. The "Location Analysis" section of the Home Evaluation Worksheet provides a format for listing the important characteristics of the neighborhood and the distance of the residence to other locations that are important to the buyer.

For more information, see:
DETAILED INSPECTION
GENERAL INSPECTION
HOME EVALUATION WORKSHEET

Detailed Inspection

The "Detailed Inspection" section of the Home Evaluation Worksheet provides a format for listing details regarding specific components of a specific residence. Appliances and draperies may or may not be included in the purchase price of the residence, depending on the wishes of the seller. It is important to clarify what fixtures, appliances and other items of personal property will be included in the purchase.

While some of the information to be listed in this section can be gathered through casual observation on a routine "walk-through" inspection of the residence, it may be helpful to request the services of a professional for some items. For example, a professional may be required to conduct an adequate inspection of the furnace or other structural components. This section assumes that the buyer will inspect both the interior and exterior of the residence. Therefore, some items (e.g., foundation and doors) are repeated in several sections of the listing.

This section also includes a "Land Use Restrictions" listing. Covenants and restrictions can have a significant impact on the use and enjoyment of the residence. Uniform covenants and restrictions are often adopted by developers for an entire subdivision (neighborhood) or condominium. These rules may

- limit business activities that can be conducted in the residence;

- affect parking, the appearance of the residence, and the requirements for storage and utility structures;

- provide for an owners association that governs certain common activities (e.g., maintenance of common grounds, private streets, or a water system);

- require payment of association fees and related common costs; and

- require certain procedures in connection with the sale of the residence.

These rules are usually included in the local real estate records and should be disclosed as part of the title examination process that will be conducted before the closing. The real estate agent or the owner should be able to provide a copy.

Zoning regulations are local governmental regulations that affect what activities and uses can be conducted in certain "zones". For example, the commercial area of a city may be zoned "heavy industrial" or "light commercial". In a residential area it may be important to know whether the zoning designation allows rental properties, shopping centers, service stations or convenience stores to be located in close proximity to residences. In particular, it can be important if there are vacant or undeveloped properties located in close proximity to the residence that is being inspected. The vacant lot next to the residence may be tomorrow's convenience store. Zoning regulations should be available from a local government official or the real estate agent.

The term "encroachments" refers to buildings, fences, shrubbery, or other items that are located on boundary lines. Encroachments can adversely affect relationships with neighbors, cause problems with the title to the property, and create difficult hurdles in obtaining financing for the purchase of a residence. While a casual inspection may raise some questions about the possibility of encroachments, a survey may be required to make an actual determination as to whether an encroachment exists. Lenders often require a survey as part of the loan application process to make sure that there are no encroachment problems.

The term "easements" refers to the legal right of a third party to use a portion of the property for a specific and limited purpose. For example, there may be specific areas of the property where utility lines must be located. Generally, the owner will not be permitted to construct a residence or other building where the easement is located. Further, the third party holding the easement rights (e.g., the utility company) will have the right to enter the area of the easement to maintain the utilities or to conduct other activities specifically related to the easement. The existence of easements should be obtained from the title examination process or from the real estate agent.

For more information, see:
GENERAL INSPECTION
HOME EVALUATION WORKSHEET
LOCATION ANALYSIS

Home Sale Worksheet

The Home Sale Worksheet is a worksheet designed to assist a seller with the sale of a personal residence. The worksheet includes a section that allows the seller to compare information regarding real estate agents. It also includes a checklist to use in preparing the home for sale.

The worksheet also offers a closing costs schedule to track the various costs of the buyer and seller that will be included as part of the sale of the residence, including commissions, title fees, property taxes, insurance, and recording costs. A progress chart allows the seller to monitor the progress of the real estate agent and the buyer's loan application process.

This worksheet is not intended as a substitute for a real estate agent or attorney. However, it provides important information and assistance in choosing an agent and monitoring the progress of the sale.

For more information, see:
CLOSING COSTS
HOME PREPARATION
PROGRESS CHART
REAL ESTATE AGENTS
REAL ESTATE DOCUMENTS

Real Estate Agents

This section allows the seller to gather information regarding several real estate agents and their firms. It is important to understand how the agent's commission will be calculated. Usually the commission is a fixed percentage of the actual sales price (which may be different than the advertised or listed price). If the seller retains an agent to sell the residence, the agent will request that the seller sign an agreement (sometimes referred to as a "listing agreement") that sets forth the seller's and agent's responsibilities. The seller should make sure that he or she clearly understands how long the listing agreement will be in effect and whether the seller can sell the residence privately to a friend or family member without becoming obligated to pay the real estate commission. An attorney should be consulted if the seller has any questions.

It is also important to understand what level of effort the agent will provide in actively marketing the residence. If the agent is a member of a "multiple listing" service, the seller should expect that information regarding the seller's residence will be published in a listing of all of the available residences in the area. This listing is made available to other real estate agents and potential buyers. The agent's plans to advertise locally and conduct open houses can be very important in attracting potential buyers.

An agent's review of the potential buyer's financial condition and credit history can be very important. If a seller accepts a buyer's offer to purchase the residence, it will often take 30 to 60 days to "close" the transaction. During that period of time, the title to the residence will be reviewed, and in many cases, the buyer will be applying for a loan. If the buyer is unable to obtain financing, the transaction may not close, and the seller will be faced with finding another buyer. In the meantime, valuable time has been lost which might have been avoided if the real estate agent had conducted some investigation into the buyer's financial condition in an effort to screen out a buyer with obvious financial problems.

For more information, see:
CLOSING COSTS
HOME PREPARATION
HOME SALE WORKSHEET
PROGRESS CHART

Home Preparation

The condition and appearance of the residence can have a dramatic effect on the sale price of the residence. Obviously, a residence that is clean and free from unpleasant odors makes a better impression on a potential buyer. It is reasonable to assume that better impressions lead to better offers. In addition, new carpeting, a fresh coat of paint, and minor repairs may be worth much more than their respective costs. This checklist provides a reminder of the repairs and cleaning chores that can be very beneficial.

For more information, see:
CLOSING COSTS
HOME SALE WORKSHEET
PROGRESS CHART
REAL ESTATE AGENTS

Real Estate Lease

A real estate lease is a written document that sets forth an agreement between a landlord (lessor) and a tenant (lessee) regarding the responsibilities and obligations of each party. A landlord is an owner of real estate (also known as "premises") who leases (rents) that property to a tenant for the tenant's use. A "residential" lease applies to real estate used as a residence, while a "commercial" lease applies to business property.

It's Legal's real estate lease documents offer a variety of optional provisions that can be tailored to specific situations. A lease should be used whenever renting property to avoid conflict between the tenant and the landlord in the event of a disagreement.

For more information, see:
ARBITRATION
GENERAL PROVISIONS - LEASE
LEGAL DESCRIPTIONS
MAINTENANCE
REAL ESTATE DOCUMENTS
SECURITY DEPOSIT
SIGNING THE RESIDENTIAL OR COMMERCIAL LEASE
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Legal Descriptions

A legal description helps identify the exact real estate that will be subject to the lease. For residential property it may be adequate to use a street address and/or apartment number to identity the leased property. For commercial leases it may be more important to include an accurate legal description.

The legal description will be found in the legal documents (perhaps a deed) under which the property ("premises") was purchased. The legal description may also be available from the local taxing authority responsible for real estate tax assessment and collection. Some legal descriptions are too lengthy for the space provided by this program. If that is the case, a copy of the legal description can be attached to the lease agreement as an exhibit. The legal description should be entered EXACTLY as it appears on the deed or other legal document.

For more information, see:
ARBITRATION
GENERAL PROVISIONS - LEASE
MAINTENANCE
REAL ESTATE LEASE
SECURITY DEPOSIT
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Security Deposit

A security deposit is an amount of money given to a landlord (or lessor) by a tenant (or lessee) that can be used by the landlord to offset damages to the leased property. Some states limit the amount of the security deposit (for example, no more than twice the monthly rental amount). In addition, some states require that the security deposit be retained in a separate account, and sometimes, in an interest bearing account.

For more information, see:
ARBITRATION
GENERAL PROVISIONS - LEASE
LEGAL DESCRIPTIONS
MAINTENANCE
REAL ESTATE LEASE
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Maintenance

It is important to clearly indicate who is responsible for which maintenance items. Generally, the landlord (lessor) is responsible for most maintenance items in a residential lease, while maintenance responsibilities are often delegated to the tenant (lessee) in commercial leases. In using It's Legal's program it is important NOT to delegate responsibility for the same maintenance item to both parties.

For more information, see:
ARBITRATION
GENERAL PROVISIONS - LEASE
LEGAL DESCRIPTIONS
REAL ESTATE LEASE
SECURITY DEPOSIT
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Sublet

A "sublet" or "sublease" is a lease by a tenant/lessee to a third party of all or a part of the property that the tenant/lessee is leasing from a landlord/lessor.

Termination on Sale

A "termination on sale" provision permits the landlord (lessor) to terminate the lease if the leased property is sold to a third party. If this provision is not included, the tenant (lessee) would have continued rights under the lease, even if the property was sold.

For more information, see:
ARBITRATION
GENERAL PROVISIONS - LEASE
LEGAL DESCRIPTIONS
MAINTENANCE
REAL ESTATE LEASE
SECURITY DEPOSIT
SUBLET
SUBORDINATION OF LEASE

General Provisions - Lease

A lease should include provisions that (i) make it clear that the agreement contains the entire agreement of the parties, (ii) require changes to the agreement to be in writing, signed by both parties, (iii) protect the agreement if one of its provisions is unenforceable, (iv) make it clear that the rights of the parties are cumulative (can use all rights), not exclusive (limited to the right that is exercised first), and (v) specify which state's laws will govern disputes between the parties.

For more information, see:
ARBITRATION
LEGAL DESCRIPTIONS
MAINTENANCE
REAL ESTATE LEASE
SECURITY DEPOSIT
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Subordination of Lease

A subordination of a lease is an agreement that the rights of a tenant (lessee) are lower in priority (subordinate) to the rights of a bank or other third party holding a mortgage on the leased property.

Arbitration

In arbitration proceedings, the parties allow an independent third party (arbitrator) to conduct a hearing to determine the facts and issues related to the dispute. The arbitrator then issues a decision that resolves the dispute, perhaps similar to a decision by a court or jury in a lawsuit. Most arbitration proceedings do not require the additional time and expense of court proceedings. The arbitration option is offered in It's Legal's commercial lease, but not in the residential lease.

The American Arbitration Association (AAA) is a not-for-profit public service group that offers arbitration services to settle disputes involving contracts and other legal matters. The AAA charges fees for arbitration based on a percentage of the amount in controversy. More information on the AAA can be obtained from:

American Arbitration Association
140 West 51st Street
New York, NY 10020-1203
(212) 484-4000

For more information, see:
GENERAL PROVISIONS - LEASE
LEGAL DESCRIPTIONS
MAINTENANCE
REAL ESTATE LEASE
SECURITY DEPOSIT
SUBLET
SUBORDINATION OF LEASE
TERMINATION ON SALE

Signing the Residential or Commercial Lease

A. Signing the Residential or Commercial Lease. The Residential or Commercial Lease should be signed by both the Lessor and the Lessee.

(1) Most states require that a lease with an initial term of more than one year must be signed to be enforceable. Even though oral leases and/or unsigned-but-delivered leases of a shorter duration may be enforceable to some extent, every lease should be signed by both parties.

(2) Furthermore, some state statutes require certain leases to be recorded in the public records, which, in turn, may require that the document be acknowledged (e.g. notarized). However, most leases need not be recorded (nor acknowledged) unless they exceed a specified duration, typically more than 3 years.

(3) If the original term of the Lease will extend beyond one year, you should determine the specific requirements of your state.

B. Safekeeping the Residential or Commercial Lease. Both the Lessor and the Lessee should retain a copy of the signed Lease. It should be kept in a secure location.

For more information, see:
REAL ESTATE DOCUMENTS
REAL ESTATE LEASE

Use of It's Legal for Others

Generally, most (if not all) states have laws restricting or limiting legal services provided by persons who have not received legal training. The theory supporting such laws is that the general public needs to be protected from the possibility that persons who lack proper training will provide inappropriate or incorrect legal advice or services. This theory is similar to the theory that medical treatment and medical services should be provided primarily (if not solely) by persons who have medical training.

There are several notable exceptions to the rules regarding legal services. For example, preparing income tax returns or providing advice regarding income tax returns is a legal service not limited to lawyers. Similarly, real estate agents frequently prepare deeds and other real estate documents; in such cases, legal services are being provided by non-lawyers.

The use of It's Legal to prepare documents for family members and friends without charge may be permissible under your state's laws. If you charge for such services, it is more likely that you will have a problem. Contact an attorney who is familiar with your state's laws if you have further questions.

For more information, see:
EMPLOYMENT DOCUMENTS
FINANCIAL DOCUMENTS
ABOUT THE LEGAL GUIDE
SUPPLEMENTAL DOCUMENTS
POWER OF ATTORNEY
WILLS AND TRUSTS

Joint Living Trust

A Joint Living Trust can be created by a person and that person's spouse. In some cases, this method is preferable to creating two separate Living Trusts, especially where assets to be contributed are held jointly and could not easily be divided to be placed into two separate trusts. Another advantage is that the joint trust is created in a single document rather than multiple documents.

Typically, the Joint Living Trust provides for both spouses, who are the Co-Grantors, to serve as Co-Trustees. They serve for such time as they are able and willing to manage the assets of the trust during their joint lives. After the death or "disability" of one, the survivor or competent spouse can continue as trustee.

During the Co-Grantors' lifetime, distributions are made to them in fixed periodic amounts. The amount of the distributions can be changed from time to time at the request of either Grantor.

When the first spouse dies, the trust provisions designate the beneficiaries who will receive the Grantor's property. At the option of the Grantor, these provisions include specific bequests, distributions of tangible personal property, and distributions of the trust assets contributed by that person. These provisions can also include retaining those assets within the trust for the benefit of the remaining spouse and/or the minor children. If the deceased spouse was serving as a trustee, the successor trustee (which may be the surviving spouse, now as surviving co-trustee), carries out these provisions of the first spouse's directions.

There are several important factors that must be considered in creating and using a Joint Living Trust, in addition to the factors that apply to an individual Living Trust. (See the LIVING TRUST section of this guide for information about the individual Living Trust; see the LIVING TRUST ADVANTAGES section for the advantages of a living trust in comparison to the Simple Will.)

1. TAX CONSEQUENCES. Generally, the income earned on the assets transferred into a Joint Living Trust is taxable to the spouses on their joint return, provided that at least one spouse acts as trustee. The Joint Living Trust is probably not appropriate for spouses who wish to file separate income tax returns.

Furthermore, upon the death of the first spouse, the assets are generally given a "stepped-up basis" to Fair Market Value. This can become significant if the assets are eventually sold. Normally, taxable gain is computed based on the total appreciation of the assets over their cost. "Stepping up the basis" means that any such appreciation to the date of death can be ignored, and the new assumed "cost" of the asset is its Fair Market Value at the date of death.

For example, assume Joe and Mary purchased 100 shares of stock for $1000 after they were married, and then contributed this stock to their Joint Living Trust. Joe died when the Fair Market Value of the stock was $2500, having appreciated in value by $1500. As surviving trustee of the Joint Living Trust, Mary later decided to sell the stock when it had appreciated even further to a Fair Market Value of $3000. Without a "Step-up in Basis", Mary would have had to report a taxable gain of $2000 ($3000 selling price less the original cost of $1000). But with the "stepped-up basis" to the $2500 Fair Market Value at the date of Joe's death, Mary need only report taxable gain of $500 ($3000 selling price less the new $2500 stepped-up basis).

With proper planning, this step-up in basis can be available for all assets within the Joint Living Trust, even for those assets originally purchased and contributed by the survivor. This constitutes one of the

main advantages of the Joint Living Trust over those of the individual Living Trust.

2. TRANSFERRING ASSETS. Where assets are held jointly between spouses, transferring them into a Joint Living Trust avoids having to fund two separate trusts with personal assets that may not be easily divided. If those assets were held jointly with survivorship rights, such survivorship status is lost, but any income earned from it is still jointly taxable and the asset still benefits the survivor upon the death of the first spouse.

3. ESTATE PLANNING. As with the individual Living Trust, if the joint estate is larger than $450,000, it may be desirable to use more complex estate planning techniques that are not provided by this program.

For more information, see:
ESTATE/PERSONAL MATTERS
FUNDING THE TRUST
JOINT PROPERTY
LIFE INSURANCE/ANNUITY/PENSION PLAN DESIGNATIONS
LIVING TRUST
LIVING TRUST ADVANTAGES
POUR OVER WILL
PROTECTION OF BENEFICIARIES
REVOCATION OR AMENDMENT
SIGNING THE LIVING TRUST
SIMPLE WILL
SPECIFIC BEQUESTS
SPOUSES
TANGIBLE PERSONAL PROPERTY
TRUST FOR CHILDREN
TRUSTEE AND EXECUTOR POWERS
WILLS AND TRUSTS

Revocation or Amendment of the Trust

This Trust includes provisions which reserve to the Grantors the right to revoke or amend the Trust. The Grantors must deliver to the Trustee an appropriate written revocation or amendment, signed by the Grantor that elects to revoke the Trust, or that sets forth the provisions that have been changed. If the Trust is being changed, it may be easier to simply restate the Trust by completing a new document.

For more information, see:
JOINT LIVING TRUST

Risk of Defects

The common law with regard to Landlord or Tenant liability for defects in the premises is well established. The Landlord is liable for dangerous conditions which are known to the Landlord but not disclosed to the Tenant. The Landlord is also liable for dangerous conditions which the Landlord could have learned by the exercise of proper care and diligence. In fact, the Landlord is considered to have "constructive knowledge" of a dangerous condition where it can be shown that the condition occurred with regularity and was therefore foreseeable. The Landlord has a duty to reasonably inspect the premises before allowing the Tenant to take possession, and to make the repairs necessary to transfer a reasonably safe dwelling unit to the Tenant unless defects are waived by the Tenant.

On the other hand, the Tenant is held responsible for dangers existing prior to the lease and which were obvious or which should have been discovered upon reasonable investigation by the Tenant. In other words, the Landlord has no duty to advise a Tenant of a condition which is readily apparent.

Finally, when the Tenant accepts the rental premises, the Tenant does not relieve the Landlord of his responsibility to disclose (or repair) defects that are "latent" (e.g. hidden) and could not have been discovered by a reasonably careful inspection.

This optional section probably does not change the rights and duties of the Landlord and Tenant with respect to each other, whether or not it is included. However, including the section serves to highlight the respective duties of the parties and serves as an educational and informational tool. Landlords will want to include this section because it notifies the Tenant of what the Landlord is not responsible for. Tenants may choose not to include this section, even though including it probably does not alter their legal relationship with the Landlord.

For more information, see:
RENTER'S INSPECTION WORKSHEET
SIGNING THE RENTER'S INSPECTION WORKSHEET
SMOKE DETECTION

Renter's Inspection Worksheet

The Renter's Inspection Worksheet may be used by either a Landlord or a Tenant to determine the condition of rental premises both before and after the Tenant's occupancy of the premises. Prior to taking possession of the rental premises, the Tenant will want to be sure that both parties are in agreement with regard to the condition of each of the items contained in the rental premises. This is because the Tenant will be required to return the items to the Landlord, at the end of the lease term, in the same condition as when the Tenant took possession of them at the beginning of the term, except for normal wear and tear. Any deterioration greater than normal wear and tear will entitle the Landlord to deduct an appropriate amount from the security deposit given by the Tenant. Therefore, the Tenant will want to document very carefully the condition of the items both at the beginning of the term and when the lease terminates in order that he is held responsible only for that deterioration that is just.

For more information, see:
RISK OF DEFECTS
SIGNING THE RENTER'S INSPECTION WORKSHEET
SMOKE DETECTION

Smoke Detection

The proper operation and maintenance of the smoke alarm is so vital to both the Tenant and the Landlord that special attention should be given to this item. The Landlord should show the Tenant the smoke alarm paragraph, take the Tenant to where the smoke alarm(s) is/are located, demonstrate how they work, and ask the Tenant to initial the paragraph to indicate that the Tenant knows how to maintain the smoke alarm and agrees to be responsible for such maintenance.

For more information, see:
RENTER'S INSPECTION WORKSHEET
RISK OF DEFECTS
SIGNING THE RENTER'S INSPECTION WORKSHEET

Signature

The Renter's Inspection Worksheet can be printed and taken to the rental premises to be completed during a joint inspection by the Landlord(s) and Tenant(s). Comments should be included where appropriate.

Upon completing the inspection, the Worksheet should be dated and signed by both the Landlord(s) and Tenant(s). Each should retain a copy.

If the optional Smoke Detector Section is included, it should be initialed separately by the Tenant at the time the detector was tested.

After the Tenant has moved out of the premises, the Worksheet can be used to make a comparison inspection of the dwelling, making notes on the Worksheet as items have deteriorated more than what would be considered normal wear and tear.

For more information, see:
RENTER'S INSPECTION WORKSHEET
RISK OF DEFECTS

Wills

It's Legal includes Simple Will, Living Trust, Joint Living Trust, and Pour Over Will documents that are appropriate for most people. However, if the value of the estate (after taking allowable deductions) is larger than $600,000, the estate may be subject to significant federal estate taxes. In some situations, state estate or inheritance taxes may become significant for estates of less than $600,000. If significant taxes are a possibility, perhaps the tax burden can be reduced by using more complex estate planning techniques that are not provided by the documents included in It's Legal. Proper use of these techniques requires an evaluation of many factors that is best handled by an attorney or other estate planner who can make appropriate recommendations and prepare customized documents that are tailored to fit the situation. For such cases, It's Legal's Estate Planning Worksheet can be used to prepare for an office conference with an attorney who can assist with the preparation of a more complex will. The guide topics for the Estate Planning Worksheet are particularly helpful in explaining more complex estate planning terms and concepts including "marital deduction", "credit trust", "marital trust", "QTIP trust", "generation skipping trust", "life insurance trust", and "charitable trust".

For more information, see:
WILLS AND TRUSTS

Real Estate

It's Legal does not include certain types of real estate documents, including deeds, land contracts, and offer and acceptance contracts for the purchase of real estate. Such documents vary significantly from one state to another, and in some cases, from one locality or county to another. Information regarding deed forms, land contracts, and offer and acceptance forms can be obtained from a local real estate agency, local attorney (or "bar") association, or the county "recorder", "register of deeds" or similar local office. There are a variety of deed forms (e.g., "warranty deed", "quit claim deed", "joint tenancy deed", "trustee deed", and "special warranty deed"). The correct deed form depends on the particular situation, and it is recommended that appropriate legal advice be obtained in choosing the appropriate form. In addition, there may be other documents that must be filed with the deed, including a document that explains the value of the property being transferred. In some cases, a tax may be assessed on the transfer, and there will likely be a recording fee.

For more information, see:
REAL ESTATE DOCUMENTS

Trademarks, Copyrights and Patents

It's Legal provides a licensing agreement that may be helpful in setting forth the basis for the use of a copyright, trademark, or patent by a third party, usually in exchange for the receipt of royalty payments. It's Legal does not provide the documents for obtaining or perfecting an interest in a copyright, trademark or patent. A "mark" or "patent" must be registered or patented with the United States Patent and Trademark Office. The process requires a search of existing marks and patents to assess the possibilities of registering a mark or obtaining a patent. The application is detailed and technical, and the information that is provided must be tailored to the particular situation.

For more information, see:
LEGAL GUIDE TOPIC LIST

Bankruptcy

It's Legal does not provide the documents that are required to file bankruptcy in the federal bankruptcy court system. The forms and requirements vary considerably depending on the circumstances and whether the party filing the bankruptcy is a business or individual. Further, the required procedures may vary from one district court to another, depending on the degree to which the court procedures have been computerized and other factors. Information regarding the required procedures can be obtained by contacting the appropriate federal district bankruptcy court. Generally, there are 1 to 5 districts in each state, with local offices in many of the larger cities. Additional information may be available from a local Legal Services organization or an attorneys' "bar" association. It's Legal's Personal Fact Sheet may be helpful in organizing personal and financial information that will be required.

For more information, see:
FINANCIAL DOCUMENTS

Divorce

It's Legal does not provide the documents that are required to file for and obtain a dissolution of marriage (divorce). The required procedures vary from state to state. Generally, both parties should be represented by an attorney, unless there are few assets and liabilities, each party can support himself/herself, and there are no children. It's Legal's Personal Fact Sheet may be helpful in organizing personal and financial information that may be required or useful.

For more information, see:
PREMARITAL AGREEMENT

Complaint to Better Business Bureau or Attorney General's Office

1. A complaint letter to a Better Business Bureau or Attorney General should be signed by the writer at the end of the letter.

2. Before mailing, be certain to make a copy of the letter for your records. Do NOT send originals of any documents. Keep a copy of all correspondence to and from the Better Business Bureau or Attorney General, as well as a written record of all telephone conversations.

3. Copies of any previous letters to the company, attempting to resolve the problem, should be enclosed with the letter to the Better Business Bureau or Attorney General.

Complaint to a Company

1. The consumer complaint letter should be signed by the writer at the end of the letter.

2. Before mailing, be certain to make a copy of the letter for your records. Do NOT send originals of any sales receipts or other related documents. Keep a copy of all correspondence to and from the company or agency, as well as a written record of all telephone conversations.

3. If a resolution to the problem is promised during a telephone conversation, request that the company representative confirm the promise in writing. If no written confirmation is received from the company, send your own letter confirming the conversation, and include the name of the company representative, the date of the conversation, and the resolution offered.

Demand for Money Owed

1. Before sending out any demand for money owed, all applicable state regulations regarding collections, as well as the Fair Debt Collection Practices Act should be investigated, to determine whether or not they would apply to you.

2. The demand letter for money owed should be signed by the writer at the end of the letter.

Request for a Credit History

1. Prior to requesting a credit report, contact the credit bureau to determine the applicable fee, and whether any proof of identity is required.

2. The letter requesting a credit report should be signed by the writer at the end of the letter.

3. If the request for a credit report is being made because of a recent denial of credit, a COPY of the denial letter should be enclosed with the request. There is no fee for a credit report requested as a result of a denial of credit, IF the request is made within 30 days of the notification of the denial.

4. If enclosing a proof of identity, send a COPY, not the original.

Challenge to a Denial of Credit

1. The letter challenging a denial of credit should be signed by the writer at the end of the letter.

2. If the challenge is related to a joint application for credit, both parties should sign the letter challenging the denial of credit.

3. A request for reasons or additional information related to a denial of credit must be made within 60 days of a notice of denial of credit. The lending institution or entity extending credit generally must respond to your request within 30 days.

Challenge to a Credit Report

1. The letter challenging a credit report should be signed by the writer at the end of the letter.

2. If the challenge relates to a joint credit report, information on both persons listed on the report should be included in the letter, and both persons should sign the letter.

3. If possible, a COPY of the credit report should be enclosed with the challenge letter. The entry being challenged should be marked or highlighted so that it can be identified easily.

Recourse Against Collection

1. The letter seeking recourse against collection should be signed by the writer at the end of the letter.

2. If the letter is in response to a demand for payment which is based on an inaccurate balance or a discount which was not applied, COPIES of receipts for payments made, canceled checks, or proof of the discount should be included with the letter. Do NOT sent originals of any documents.

Employment Agreement

1. The Employment Agreement should be signed by both parties and becomes effective as of the date inserted at the beginning of the Agreement. It is not necessary that the signatures be witnessed or notarized.

2. Do not use this document if the Employee is covered by a collective bargaining agreement, considered to be a consultant, or considered to be an independent contractor.

3. An attorney should be consulted regarding any unique issues not addressed by this program.

4. Review this document periodically to decide if circumstances have changed enough to warrant changes to the Employment Agreement.

Letter of Acceptance

1. The Letter of Acceptance should be signed and a copy retained. It is not necessary that the signature be witnessed or notarized.

2. This Letter should be sent immediately after the final interview in which employment was offered. The Letter of Acceptance serves to confirm what the Employee believes to be the agreement between the parties, including acceptance of the employment itself, the terms and benefits. However, because the Employer has not signed the Acceptance, this letter does not serve as an official employment contract. The parties should prepare and sign an Employment Agreement as the final step.

Offer of Employment

1. The Employment Confirmation Letter should be signed before it is sent and a copy retained. It is not necessary that the signature be witnessed or notarized.

2. Note that this letter is not an Employment Agreement and will not be considered binding upon the employee. In fact, if the applicant formally accepts the company's offer, an Employment Agreement should then be prepared and signed by the parties.

3. The Employer should send the Employment Confirmation Letter to a potential employee immediately after the final interview and prior to the time that the applicant accepts the job offer. This letter merely confirms the company's understanding of the terms and conditions that were discussed with the applicant during the interview.

Consulting Agreement

1. The Consulting Agreement should be signed by both parties and becomes effective as of the date specified in the Agreement. It is not necessary that the signatures be witnessed or notarized.

2. Note that the Consulting Agreement should only be used for a party who is an independent contractor with respect to the Company. If the arrangement between the Company and the Consultant conforms more closely to the characteristics of an employee/employer relationship, use the Employment Agreement instead.

Confidentiality Agreement

1. The Confidentiality Agreement should be signed by both parties. It is not necessary that the signatures be witnessed or notarized.

2. The Confidentiality Agreement becomes effective as of the date entered in the opening paragraph of the agreement.

Bill of Sale

1. The Bill of Sale should be signed and dated by both parties. It is not necessary that the signatures be witnessed or notarized.

2. This document cannot be used to transfer real estate. Further, any personal property that has been pledged as security for a loan should not be transferred until a release has been obtained from the party to whom the loan is owed.

3. After the Bill of Sale is signed by both parties, legal ownership of the property is transferred, effective as of the date provided in the document, regardless of which party has possession of the property.

Promissory Note

1. The Promissory Note must be signed and dated by the Promisor. The Promisor's city and state should also be included on the note. No witnesses or notarization are required.

2. Review the Promissory Note periodically to be sure that no defaults have occurred. If a due date is missed, the Payee should notify the Promisor promptly and inform the Payee of any penalty provisions which may be imposed because of the default.

Equipment Lease

1. The Equipment Lease should be signed and dated by both parties. It is not necessary that the signatures be witnessed or notarized.

2. A copy of the Equipment Lease should be provided to each party. The document should be reviewed periodically to ensure that the parties are complying with their respective obligations regarding payment terms, securing insurance, maintenance, and return of the property to the Lessor upon completion of the lease term.

License Agreement

1. The License Agreement should be signed and dated by both parties. It is not necessary that the signatures be witnessed or notarized. It becomes effective as of the date indicated in the document.

2. A copy of the License Agreement should be provided to each party. The document should be reviewed periodically to ensure that the parties are complying with their respective obligations.

Corporate Minutes

1. Corporate minutes must be signed by the corporate secretary or other person authorized to take minutes or record official corporate action. There is no requirement that the signature be witnessed or notarized.

2. In order to ensure compliance with the relevant state corporate law, it is recommended that an attorney review the corporate minutes upon their completion. This step can become especially important if the corporation has more than one class of stock or if it is involved in unusual transactions.

Notice/Waiver of Notice

1. The Corporate Notice should be signed by the appropriate corporate official, usually the secretary. There is no requirement that the signature be witnessed or notarized. It should be mailed to all shareholders and/or directors at their current addresses.

2. The Corporate Waiver of Notice must be signed and dated by each member of the group, e.g., shareholders, directors, members. There is no requirement that the signatures be witnessed or notarized.

Unanimous Consent

1. When the Unanimous Consent is used, the date and signature of each director and shareholder who is taking action by unanimous consent must be obtained. It is not sufficient that a mere majority of the directors and/or shareholders sign the document; it must be unanimous.

Corporate Worksheet

1. The Corporate Worksheet is not a legal document and does not require signatures, witnesses or notarization. The document can be printed and/or updated as needed.

Business Entity Planning Worksheet

1. The Business Entity Planning Worksheet is not a legal document and does not require any signature, witnesses or notarization.

2. The Worksheet is an educational tool, and can serve to organize the characteristics of a proposed business to facilitate planning. Before making a final selection, an attorney, accountant or other tax professional should be consulted.

General Power of Attorney

1. The General Power of Attorney must be signed by a Grantor who is mentally competent. The signature should be notarized for two reasons. First, notarization makes it harder for a third party to challenge the validity of the signature. Second, notarization will allow the document to be "recorded" for use with real estate transactions, if recording becomes necessary or advisable. Four states--Florida, North Dakota, Ohio and South Carolina--require that the Power of Attorney be signed in the presence of witnesses. Furthermore, in some states, the name of the person who prepared the Power of Attorney document must be indicated in the document in order that it may be recorded.

2. If the Power of Attorney includes the power to encumber or transfer real estate, it may be helpful to include the legal description of the property. Make sure that the legal description is included exactly as it is described on the deed or abstract of title.

3. Advise the Agent regarding the location of the original copy of the Power of Attorney document, and make sure that the Agent will have access to the original. The Grantor should retain a copy for his/her files.

4. CAUTION: BEFORE SIGNING THIS DOCUMENT, CONSIDER ITS CONSEQUENCES. YOU ARE PROVIDING ANOTHER PERSON (THE AGENT) WITH THE POWER TO HANDLE BUSINESS AND LEGAL MATTERS ON YOUR BEHALF. ANY SUCH ACTION UNDERTAKEN BY THE AGENT WITHIN THE SCOPE OF THE POWER OF ATTORNEY DOCUMENT IS LEGALLY BINDING UPON YOU.

Special Power of Attorney

1. The Special Power of Attorney must be signed by a Grantor who is mentally competent. The signature should be notarized for two reasons. First, notarization makes it harder for a third party to challenge the validity of the signature. Second, notarization will allow the document to be "recorded" for use with real estate transactions, if recording becomes necessary or advisable. Four states--Florida, North Dakota, Ohio and South Carolina--require that the Power of Attorney be signed in the presence of witnesses. Furthermore, in some states, the name of the person who prepared the Power of Attorney document must be indicated in the document in order that it may be recorded.

2. If the Power of Attorney includes the power to encumber or transfer real estate, it may be necessary to include the legal description of the property. Make sure that the legal description is included exactly as it is described on the deed or abstract of title.

3. Advise the Agent regarding the location of the original copy of the Power of Attorney document, and make sure that the Agent will have access to the original. The Grantor should retain a copy for his/her files.

4. CAUTION: BEFORE SIGNING THIS DOCUMENT, CONSIDER ITS CONSEQUENCES. YOU ARE PROVIDING ANOTHER PERSON (THE AGENT) WITH THE POWER TO HANDLE BUSINESS AND LEGAL MATTERS ON YOUR BEHALF. ANY SUCH ACTION UNDERTAKEN BY THE AGENT WITHIN THE SCOPE OF THE POWER OF ATTORNEY DOCUMENT IS LEGALLY BINDING UPON YOU.

Revocation of Power of Attorney

1. The Revocation of Power of Attorney, whether General or Special, must be signed AND must be presented to the Agent as evidence of the Grantor's intent to revoke the Power of Attorney. The revocation should also be notarized.

2. It is recommended that, because the Agent must be given a copy of the revocation, such revocation be sent by certified mail to the Agent's last known address. Alternatively, the Agent may be hand delivered a copy of the revocation, in which case, the Agent should sign the document acknowledging receipt of the revocation.

Residential Real Estate Lease

1. The Residential Lease should be signed by both the Lessor and the Lessee. Most states require that a lease with an initial term of more than one year must be signed (it is strongly recommended that all leases be signed). If the Lease exceeds, for example, three years, some states require that the Lease be recorded in the public records, which in turn, requires that the document be acknowledged/notarized. If the original term of the lease will extend beyond one year, you should determine what are the specific requirements of your state with regard to notarizing and/or recording the Lease.

2. Both parties should retain a copy of the signed Lease in a secure location.

Commercial Real Estate Lease

1. The Commercial Lease should be signed by both the Lessor and the Lessee. Most states require that a lease with an initial term of more than one year must be signed (it is strongly recommended that all leases be signed). If the Lease exceeds, for example, three years, some states require that the Lease be recorded in the public records, which in turn, requires that the document be acknowledged/notarized. If the original term of the lease will extend beyond one year, you should determine what are the specific requirements of your state with regard to notarizing and/or recording the Lease.

2. Both parties should retain a copy of the signed Lease in a secure location.

Home Purchase Worksheet

1. The Home Purchase Worksheet is not a legally binding document and no signature, witnesses or notarization are required. However, because this Worksheet provides a logical and organized description of the Buyer's preferences, the relevant portions of the document can be given to a real estate agent who will attempt to locate suitable properties.

Home Evaluation Worksheet

1. The Home Evaluation Worksheet is not a legally binding document and no signatures, witnesses or notarization are required. This Worksheet can be used by the Buyer to organize personal preferences and to review those preferences with a real estate agent and/or lender.

Home Sale Worksheet

1. The Home Sale Worksheet is not a legally binding document and no signatures, witnesses or notarization are required. This Worksheet is designed merely to help the potential seller locate a real estate agent or prepare the home for sale by the owner, prior to "listing" the home for sale.

Rental Application

1. The Rental Application must be signed by the applicant and any co-applicant. The applicant(s) shall be provided a copy of the application.

2. In signing the Application, the applicant is (i) verifying that the information provided is true and correct to the best of his or her knowledge, (ii) authorizing the Landlord to verify the references and employment information provided in the application, and (iii) acknowledging receipt of a copy of the Application.

3. The Rental Application includes a provision for the Landlord to sign after making a determination to accept or refuse the applicant. NOTE: A SIGNED ACCEPTANCE BY THE LANDLORD CONSTITUTES A LEGALLY BINDING PROMISE BY THE LANDLORD TO ENTER INTO A LEASE WITH THE APPLICANT. WHILE THE ACCEPTANCE OF THE APPLICATION DOES NOT CONSTITUTE A LEASE, THE LANDLORD IS REQUIRED TO ACT IN GOOD FAITH TO COMPLETE THE PROCESS BY NEGOTIATING RENTAL TERMS THAT WILL BE EVIDENCED BY A REAL ESTATE LEASE.

4. The optional Employment Verification Letter, if it is to be used, must be signed by the applicant at the time the Application is submitted to the Landlord.

5. The optional Request for Account Verification, if it is to be used, must be signed by the applicant(s) at the time the Application is submitted.

Rental Inspection Checklist

1. The Rental Inspection Checklist can be printed and taken to the rental premises to be completed during a joint inspection by the Landlord(s) and Tenant(s). Comments should be included where appropriate.

2. Upon completing the inspection, the Checklist should be dated and signed by both the Landlord(s) and Tenant(s). Each should retain a copy.

3. If the optional Smoke Detector Section is included, it should be initialed separately by the Tenant at the time the detector was tested.

4. After the Tenant has moved out, the Checklist can be used to make a comparison inspection of the dwelling, making notes on the Checklist as items have deteriorated more than what would be considered normal wear and tear.

Simple Will

1. Signing the will. The Simple Will should be signed by the Willmaker in the presence of three witnesses and a notary public.

a. Notice to the person who signs this Simple Will:

(1) This Will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it does not normally apply to proceeds of life insurance on your life or your retirement plan benefits.

(2) This Will is not designed to reduce taxes. You should discuss the tax results of your decisions with a competent tax advisor.

(3) If you chose the option of creating a trust with this document, you should be sure that you intended to create such a trust.

b. Signing the Will. The Will is not valid unless it is signed by the Willmaker, if able. If the Willmaker is unable to sign due to physical disability, another person may be able to sign on behalf of the Willmaker, in the Willmaker's presence, and at the express direction of the Willmaker. If you have any questions regarding the possibility of someone signing on behalf of the Willmaker, a lawyer should be contacted.

c. Witnesses.

(1) The witnesses to this Will should not be persons who may receive property under this will, and they must be sixteen years of age or older.

(2) All of the witnesses must watch the Willmaker sign this Will. The Willmaker should verbally declare that the instrument is his/her Last Will and Testament.

(3) Each witness must sign his or her name with the Willmaker and the other witnesses present. The witnesses should be satisfied that the Willmaker willingly signed the document as his/her free and voluntary act, and that the Willmaker was of full age and sound mind.

(4) Many states require only two witnesses, but the signature of a third witness provides some protection against the possibility that one of the witness' signature will be invalid for some reason. For example, a person should not be a witness if that person is a beneficiary under the Will.

d. Self-proving Affidavit. In most cases, this document should be executed and attached to the back of the will. Signing the will and this affidavit in the presence of a notary public provides evidence that the Willmaker and the witnesses actually signed their names in the presence of each other on the date of the will. This evidence is helpful in many states at the time that the Will is admitted to probate -- the process of proving the Will and administering the Willmaker's estate. In many states the signature of the notary public on the affidavit is not a required step, and in California, notary publics are requested to not provide this service. In such cases, it is permissible to not use the affidavit. However, it is recommended that the affidavit be used unless state law requests that the notary public not sign.

e. Dates. Fill in the date wherever requested, using the date on which the actual signing takes place. This requirement could become essential to the validity of the Will, for example, where this will revokes an earlier will.

f. Number of pages. Indicate the number of pages in the Will, including the page(s) on which the witness signature lines appear, but excluding the page with the affidavit.

2. Safekeeping the will. The original copy of the will should be kept in a secure location such as a safety deposit box at your bank. A second copy should be kept in your files at home. In any event, be sure that the original copy is placed in a fire proof place. You may wish to provide a copy to your attorney, or possibly to the person that you have named as executor or trustee. However, before distributing such copies, you should consider that it may become awkward to retrieve them later, should you decide to modify your will and/or change your designation of executor or trustee.

3. Changing the will. In many states you cannot change, delete, or add words to the face of this will; if you do, the change or the deleted or added words may be disregarded. You may be able to amend this will by executing a "codicil" to the will, but this method is not recommended. When changes are desired, it is recommended that you revoke this will by making a new will which expressly revokes the former will. For example, if you marry or divorce after you sign this will, you should make and sign a new will.

Estate Planning Worksheet

1. There is no need to sign the estate planning worksheet. If your estate is less than $450,000, this worksheet can now be used to prepare an It's Legal Simple Will, Living Trust/Pour Over Will or Joint Living Trust/Pour Over Will. If your estate is larger than $450,000, you can provide this worksheet to an estate planning lawyer who will review this information for use in preparing an estate plan.

2. It is necessary for each spouse to fill out an estate planning worksheet, which describes property held by them either separately or jointly with another person. They also need to state their intentions for their children, because, for example, each spouse may have his or her own ideas.

Living Trust

1. Signing the Living Trust. The Living Trust must be signed by both the Grantor and the Trustee. It is recommended that their signatures be notarized. However, unlike the Simple Will, no witnesses are necessary.

2. Dating the Living Trust. Fill in the date on the first page of the document. 3. Transfer of Assets Into the Trust. In addition to creating and signing the Living Trust document, assets must be transferred into the Trust. A Living Trust only applies to the assets that are actually transferred into the Trust. Assets can be transferred at the time of the creation of the Trust and also at later times. At death, the companion document, the Pour Over Will, transfers the Grantor's remaining property (except joint property) into the Trust.

4. Pour Over Will. The use of a Living Trust does not eliminate the need for a will. A Grantor may have assets that he or she does not wish to transfer into the Living Trust. For example, it may be preferable to not transfer some personal property such as vehicles, household and personal effects, and a personal checking account. A Pour Over Will serves to handle the distribution of such assets by requiring that such assets be transferred to the trustee of the Living Trust for final distribution. It is highly recommended that a Living Trust not be signed, unless a Pour Over Will is also properly signed by the Grantor.

5. Safekeeping the Trust. The original copy of the Trust should be kept in a secure location such as a safety deposit box at your bank. A second copy should be given to the named Trustee if he or she is not the Grantor. A third copy should be kept in your files at home. In any event, be sure that the original copy is placed in a fire proof place. You may wish to provide a copy to your attorney, and possibly to the person that you have named as successor trustee. However, before distributing such copies, you should consider that it may become awkward to retrieve them later, should you decide to change your designation of successor trustee.

6. Revoking the trust. This trust includes provisions which reserve to the Grantor the right to revoke or amend the trust. The Grantor must deliver to the Trustee an appropriate written revocation or amendment, signed by the Grantor.

Pour Over Will

1. Signing the Pour Over Will. The Pour Over Will should be signed by the Willmaker in the presence of three witnesses and a notary public.

a. Notice to the Person who Signs this Pour Over Will:

(1) This Pour Over Will should only be used in connection with a Living Trust or a Joint Living Trust. The applicable Trust and the Pour Over Will should be signed at the same time.

(2) This Will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or a spouse's share of community property, and it does not normally apply to proceeds of life insurance or retirement plan benefits.

(3) This Will is not designed to reduce taxes. You should discuss the tax results of your decisions with a competent tax adviser.

b. The Pour Over Will is not valid unless it signed by the Willmaker, if able. If the Willmaker is unable to sign due to physical disability, another person may be able to sign on behalf of the Willmaker, in the Willmaker's presence and at the express direction of the Willmaker. If you have any questions regarding the possibility of someone signing on behalf of the Willmaker, a lawyer should be contacted.

c. Witnesses. The witnesses to this Pour Over Will should not be persons who may receive property under this will or the related Living Trust. The witnesses must be 16 years of age or older. All of the witnesses must watch the Willmaker sign this Will. The Willmaker should verbally declare that the instrument is his or her Last Will and Testament. Each witness must sign his or her name with the Willmaker and the other witnesses present. The witnesses should be satisfied that the Willmaker willingly signed the document as his or her free and voluntary act, and the Willmaker was of full age and sound mind. Many states require only two witnesses, but the signature of a third witness provides some protection against the possibility that one of the witnesses signature will be invalid for some reason. For example, a person should not be a witness if that person is a beneficiary under the Will.

d. Self-Proving Affidavit. In most cases, this document should be executed and attached to the back of the Pour Over Will. Signing the Pour Over Will and this affidavit in the presence of a notary public provides evidence that the Willmaker and the witnesses actually signed their names in the presence of each other on the date of the Pour Over Will. This evidence is helpful in many states at the time the Will is admitted to probate --the process of proving the Will and administering the Willmaker's estate or trust. In many states, the signature of the notary public on the affidavit is not a required step, and in California notary publics are requested to not provide this service. In such cases, it is permissible to not use the affidavit. However, it is recommended that the affidavit be used unless state law requests that the notary public not sign.

e. Dates. Fill in the date wherever requested, using the date on which the actual signing takes place. This requirement could become essential to the validity of the Pour Over Will, for example, where this Pour Over Will revokes an earlier will.

f. Number of Pages. Indicate the number of pages in the Pour Over Will, including the pages on

which the witness signature lines appear, but excluding the page with the affidavit.

2. Safekeeping the Pour Over Will. The original copies of the Pour Over Will and the Living Trust or Joint Living Trust should be kept in a secure location, such as a safe deposit box at your bank. A second copy should be kept in your files at home. In any event, be sure that the original copy is put in a fireproof place. You may wish to provide a copy to your attorney, or possibly to the person that you have named as executor or trustee. However, before distributing such copies, you should consider that it may become awkward to retrieve them later, should you decide to modify your will or trust and/or change your designation of executor or trustee.

3. Changing the Pour Over Will. In many states you cannot change, delete or add words to the face of this Pour Over Will; if you do, the change or deleted or added words may be disregarded. You may be able to amend this Pour Over Will by executing a codicil to the Will, but this method is not recommended. When changes are desired, it is recommended that you revoke this Pour Over Will by making a new will which expressly revokes all former wills. For example, if you should decide to revoke the Pour Over Will, you should make and sign a new Will.

Personal Fact Sheet

This document is not a formal document, and it does not need to be signed. It is merely a worksheet to document personal data and to organize your financial information. The final document should be stored in a location where the person who will become responsible for your affairs would expect to find such information. In addition to the organization of your financial matters, this document may be useful to your spouse or other family members if you become incapacitated or upon your death. It contains the type of information needed if another person is required to manage your financial affairs, such as a conservator appointed by a court, or your agent as designated under a Power of Attorney. Also, this document contains the type of information that a lawyer or an executor would need for the administration of an estate.

This document should be reviewed at least annually and updated to reflect additions or changes to the items contained within it.

Memorial Services

1. After you have provided directions for the type of funeral and/or memorial service that you would prefer, you should discuss these plans with family, and/or leave a copy of your wishes where your executor or close family members will be able to find it. Provide a copy of these wishes to any funeral director with whom you have made arrangements. If any prepayments were made, you should attach proof of such purchase to this document.

2. Although this document is not legally binding, it should be signed by the Declarant in order to memorialize his or her stated intentions. The document should be placed in a safe/secure location and yet one that is quickly accessible by close family/friends in order that the Declarant's wishes, regarding the disposition of the body, memorial services, and arrangements to be made, can be quickly determined.

Premarital Agreement

1. This Premarital Agreement must be signed prior to the wedding ceremony because the consideration (value) for entering the agreement is the act of marriage itself. The signature block also provides for the document to be signed in the presence of a notary public to witness the agreement and permit the recording of the agreement in the public records. The states of North Dakota, Ohio and South Carolina require that the agreement be signed in the presence of witnesses.

2. The exhibit describing the financial position of each person should be signed by the person whose assets are described. The other person who receives the exhibit should initial it to indicate such receipt.

3. After signing the document and having it notarized, one copy should be retained in a secure place within the residence of the parties. Each spouse should also place a copy in a secure place outside the home; perhaps a copy could be given to each spouse's personal attorney or placed in that spouse's personal safe deposit box.

Bad Check Notice

1. The Bad Check Notice letter should be signed by the payee at the end of the letter.

2. Before mailing, be certain to make a copy of the letter for your records. Do NOT send the original copy of the returned check with the letter. Keep a copy of all correspondence to and from the payor, as well as a written record of all telephone conversations.

Credit Card Inquiry

1. The Credit Card Inquiry letter should be signed by the cardholder at the end of the letter.

2. If the credit card statement is believed to contain an error, or if more information is needed about a transaction on the bill, write these inquiries in the letter. Do not write on the bill itself.

3. Make sure that the Issuer receives the written inquiry no later than 60 days after the Issuer sent the first bill in which the error or problem appeared.

4. Send the letter by certified mail, with a return receipt requested, as proof that the card issuer received the letter.

5. If this letter is a follow-up to an earlier letter, attach a copy of the previous correspondence regarding the complaint. Do not send originals, and keep a copy of all correspondence for future reference.

6. It is helpful to enclose a copy of the credit card statement. However, do not send original documents. Highlight, underline or otherwise identify the transaction in question.

Bill of Sale Motor Vehicle

1. The Bill of Sale Motor Vehicle should be signed and dated by both the Buyer(s) and the Seller(s). The sale becomes effective as of the date provided in the text of the document. It is not necessary that the signatures be witnessed or notarized.

2. This document only represents the transfer of the RIGHT to ownership; the motor vehicle's certificate of title represents ACTUAL ownership. Thus, this document and the Certificate of Title are needed to effectuate the transfer of the motor vehicle.

3. The Buyer(s) should be sure to obtain appropriate insurance coverage for the vehicle.

Work for Hire Agreement

1. The Work for Hire Agreement should be signed by both parties and becomes effective as of the date specified in the Agreement. It is not necessary that the signatures be witnessed or notarized.

2. The Work for Hire Agreement should only be used for a party who is an independent contractor with respect to the company. If the arrangement between the company and the service provider conforms more closely to the characteristics of an employee/employer relationship, use the Employment Agreement instead.

Child Care Authorization

1. The Child Care Authorization should be signed; it is not necessary that the signature be witnessed or notarized. Provide one copy of the authorization to the caretaker and retain one copy.

Letter to School

1. The Letter to School is effective merely to provide notice to school officials regarding the identity of the caretaker(s) and the scope of the authority granted to the caretaker(s). The Letter to School does not provide the grant of authority to the caretaker(s). The Letter should be signed by the parent(s), and a copy retained.

Child Care Instructions

1. The Child Care Instructions document does not grant any specific powers to the caretaker (use the Child Care Authorization for that purpose). The document merely provides helpful information for use by the temporary caretaker. The document should be provided to the caretaker and the contents should be discussed orally.

Revocation of Living Will

1. Although a Living Will may be effectively revoked under a variety of methods, it is recommended that this formal, written revocation be used. The Revocation of Living Will ("Revocation") should be signed and dated by the person making the revocation. If the Revocation is being executed by a resident of New Hampshire, New Mexico, Mississippi or Vermont, one or more disinterested witnesses must sign the Revocation. In other states, even though witnesses may not be technically required, the use of a witness formalizes the document and provides added assurance that the Revocation will be recognized.

2. The Revocation is not enforceable or effective until the Declarant's attending physician has been notified of the revocation. Provide a copy of the Revocation to the Declarant's attending physician or to someone who will deliver it to the Declarant's health care provider.

3. The Revocation will no longer be valid if another Living Will is executed, dated subsequent to the date of the Revocation. This is because the new Living Will automatically supersedes any prior Living Wills and, in turn, revocations of those prior Living Wills.

4. It is recommended that, because the attending physician or health care provider must receive notice of the Revocation, the Revocation should be mailed by certified mail to the provider's last known address. Alternatively, a copy of the Revocation may be hand-delivered to the provider, in which case the provider should sign the document acknowledging receipt of the Revocation. If the Declarant is a patient in a health care institution, a copy of the Revocation should be placed in the Declarant's medical chart. In Mississippi, the Revocation should be filed with the Mississippi Bureau of vital statistics of the State Board of Health.

Living Will

1. CAUTION: The Living Will may not be valid in the Declarant's state of residence unless that state was selected in the program. Consult an attorney if there is an uncertainty as to which state's document to use.

2. The Declarant must be 18 years old and mentally competent in order to execute a Living Will. The Living Will must be signed and dated in order to be effective. Witness requirements must be reviewed before executing the Living Will. If the Declarant's signature on the Living Will is not witnessed in the proper manner, it may not be enforceable. Further, some states require that the selections regarding the use of artificial nutrition and hydration and/or other matters be separately initialed or signed.

3. A few states require that the signatures of the Declarant and the witnesses be notarized. If that is the case for the state that was selected, a provision will appear at the bottom of the Living Will for such notarization. The Declarant should carefully review the document to make sure that other required signatures or initial lines are completed as required.

4. Each state has restrictions on who may be a witness. In general, avoid using witnesses who are relatives of the Declarant by blood, marriage, or adoption, or who may become directly involved in providing health care to the Declarant, or an employee of a health care provider attending the Declarant on the date of the declaration, or an individual who is less than 18 years of age.

5. Keep a copy of this document after signing it. Give one copy to each health care provider and a copy to appropriate family members. Indicate on the document itself who has received a copy, in case there is a need for later retrieval, modification or revocation.

6. Before signing this document, the Declarant should be completely comfortable that he or she understands the nature and range of decisions that may be made on the Declarant's behalf. Discuss the range of medical decisions with a physician, health care provider, social worker, pastor, or an attorney -- someone who is knowledgeable about these issues and can answer questions.

7. If the Declarant learns that he or she has a terminal condition, after signing a Living Will, he or she should execute a new Living Will to re-emphasize his or her informed decision with regard to his or her preferences.

Health Care Power of Attorney

1. CAUTION: The Health Care Power of Attorney may not be valid in the Principal's state of residence unless that state was selected in the program. Consult an attorney if there is an uncertainty as to which state's document to use.

2. The Health Care Power of Attorney must be signed in the presence of witnesses. Certain individuals are prohibited from being witnesses, depending upon state law, and they must be 18 years of age. Some states require notarization of the document.

3. The Principal should inform the person named as Health Care Agent of the designation and obtain his or her consent. The Principal should discuss the scope of the Health Care Power of Attorney with the designated Agent, expressing the Principal's wishes, values and preferences regarding health care. Certain persons are prohibited from serving as the Health Care Agent; the health care provider and such provider's employees may not serve, unless that person is related to the Principal. Some states require that the designated agent must accept the designation by signing the form. Some states require that a "patient advocate" in a skilled nursing facility witness the signing of this document where the Principal is a patient in such facility.

4. The Principal should keep the signed, original document with his or her personal papers. Copies should be provided to the person named as Health Care Agent, appropriate family members, and health care providers. The Principal may wish to consult with an attorney to determine whether there have been any recent changes to state laws regarding execution and implementation of the document.

5. If a Living Will has been signed as a separate document, and if the Health Care Power of Attorney does not specifically refer to such Living Will, be sure that any directives contained in the Health Care Power of Attorney, especially as they relate to life-sustaining procedures, are consistent with those contained in the Living Will.

6. It is recommended that the optional "Safekeeping" section be completed. If the Health Care Power of Attorney document needs to be reviewed, revised or retrieved, this section provides information regarding the location of the copies of the document.

Joint Living Trust

1. Signing the Joint Living Trust. The Joint Living Trust must be signed by both Grantors and the Trustee. It is recommended that their signatures be notarized. However, unlike the Simple Will, no witnesses are necessary.

2. Dating the Joint Living Trust. Fill in the date on the first page of the document.

3. Transfer of Assets Into the Joint Living Trust. In addition to creating and signing the Joint Living Trust document, assets must be transferred into the Trust. A Joint Living Trust only applies to the assets that are actually transferred into the Trust. Assets can be transferred at the time of the creation of the Trust and also at later times. Upon the death of either spouse, the companion document, the Pour Over Will, transfers that Grantor's remaining property (except joint property that is held outside of the Trust) into the Trust.

4. Pour Over Will. The use of a Joint Living Trust does not eliminate the need for a will. The Grantors may have assets that they do not wish to transfer into the Joint Living Trust. For example, it may be preferable to not transfer some personal property such as vehicles, household and personal effects, and a personal checking account. A Pour Over Will serves to handle the distribution of such assets by requiring that such assets be transferred to the trustee of the Joint Living Trust for final distribution. IT IS HIGHLY RECOMMENDED THAT A JOINT LIVING TRUST NOT BE SIGNED, UNLESS A POUR OVER WILL IS ALSO PROPERLY SIGNED BY EACH GRANTOR.

5. Safekeeping the Trust. The original copy of the Trust should be kept in a secure location such as a safety deposit box at a bank. A second copy should be given to any Trustee(s) who is not also a Grantor. A third copy should be kept in the Grantor's files at home. In any event, be sure that the original copy is placed in a fire proof place. You may wish to provide a copy to the Grantor's attorney, and possibly to the person that has been named as successor trustee. However, before distributing such copies, you should consider that it may become awkward to retrieve them later, if it is decided to change the designation of successor trustee.

6. Amending or Revoking the Trust. This Trust includes provisions which reserve to the Grantors the right to revoke or amend the Trust. The Grantors must deliver to the Trustee an appropriate written revocation or amendment, signed by the Grantor that elects to revoke the Trust, or that sets forth the provisions that have been changed. If the Trust is being changed, it may be easier to simply restate the Trust by completing a new document.

Advance Health Care Directive

1. CAUTION: The Advance Health Care Directive ("Directive") may not be valid in a state other than the state selected as the Declarant's state of residence. Consultant an attorney if there is an uncertainty as to which state's document to use.

2. The Declarant must be 18 years old and mentally competent in order to execute a Directive. The Directive must be signed and dated in order to be effective. Witness requirements must be complied with when executing the Directive. This program provides for the correct witnessing procedures based upon the state entered as the Declarant's address. If the Declarant's signature on the Directive is not witnessed in the proper manner, it may not be enforceable.

3. Each state has restrictions on who may be a witness. In general, avoid using witnesses who are relatives of the Declarant by blood, marriage, or adoption, or who may become directly involved in providing health care to the Declarant, or an employee of a health care provider attending the Declarant on the date of the declaration, or an individual who is less than 18 years of age.

4. Keep a copy of this document after signing it. Give one copy to each health care provider, a copy to appropriate family members, and to the person named as the Agent, if one is appointed in this document. Indicate on the document itself who has received a copy, in case there is a need for later retrieval, modification or revocation.

5. Before signing this document, the Declarant should be completely comfortable that (s)he understands the nature and range of decisions that may be made on the Declarant's behalf. Discuss the range of medical decisions with a physician, health care provider, social worker, pastor, or an attorney -- someone who is knowledgeable about these issues and can answer questions.

6. If the Declarant learns that (s)he has a terminal condition after signing a Directive, (s)he should execute a new Directive to re-emphasize his or her informed decision with regard to his or her preferences.

Revocation of Advance Directive

1. Although an Advance Health Care Directive ("Advance Directive") may be effectively revoked under a variety of methods, it is recommended that this formal, written revocation be used. The Revocation of an Advance Directive ("Revocation") should be signed and dated by the person making the Revocation. If the Revocation is being executed by a resident of New Hampshire, New Mexico, Mississippi, Vermont or Wyoming, one or more disinterested witnesses must sign the Revocation. In other states, even though witnesses may not be technically required, the use of a witness formalizes the document and provides added assurance the Revocation will be recognized.

2. The Revocation is not enforceable or effective until the Principal's attending physician has been notified of the Revocation. Provide a copy of the Revocation to the Principal's attending physician or to someone who will deliver it to the Principal's health care provider.

3. The Revocation will no longer be valid if another Advance Directive is executed and dated subsequent to the date of the Revocation. This is because the new Advance Directive automatically supersedes any prior Advance Directive and, in turn, revokes those prior Advance Directives.

4. It is recommended that, because the attending physician or health care provider must receive notice of the Revocation, the Revocation should be mailed by certified mail to the provider's last known address. Alternatively, a copy of the Revocation may be hand-delivered to the provider, in which case the provider should sign the document acknowledging receipt of the Revocation. If the Declarant is a patient in a health care institution, a copy of the Revocation should be placed in the Declarant's medical chart.

Revocation of Health Care Power of Attorney

1. Although a Revocation of Health Care Power of Attorney ("Revocation") may be effectively revoked under a variety of methods, it is recommended that this formal, written revocation be used. The Revocation should be signed and dated by the person making the revocation. If the Revocation is being executed by a resident of Wyoming, at least one disinterested person must witness the Revocation. In other states, even though witnesses may not be technically required, the use of a witness formalizes the document and provides added assurance that the Revocation will be recognized.

2. The Revocation is not enforceable or effective until the Principal's attending physician has been notified of the revocation. Provide a copy of the Revocation to the Principal's attending physician or to someone who will deliver it to the Principal's health care provider.

3. The Revocation will no longer be valid if another Health Care Power of Attorney is executed, dated subsequent to the date of the Revocation. This is because the new Power of Attorney automatically supersedes any prior Powers of Attorney and, in turn, revocations of those prior Powers of Attorney.

4. It is recommended that, because the attending physician or health care provider must receive notice of the Revocation, the Revocation should be mailed by certified mail to the provider's last known address. Alternatively, a copy of the Revocation may be hand-delivered to the provider, in which case the provider should sign the document acknowledging receipt of the Revocation. If the Declarant is a patient in a health care institution, a copy of the Revocation should be placed in the Declarant's medical chart.

Receipt

1. The General Receipt should be signed and dated by the party receiving the property or document(s). It is not necessary that the signature be witnessed or notarized.

2. The General Receipt does not serve to transfer legal ownership of the property. It merely provides evidence that the recipient has obtained possession of the property. You may wish to use It's Legal's Bill of Sale in order to transfer legal ownership.

Exhibits

1. The Exhibit document supplements other documents that may refer to legal descriptions or provide other information which is lengthy and better handled as a separate page attached to the document. Therefore, it is usually not appropriate or necessary to sign the Exhibit. The exception to this general rule is where the recipient of the information seeks to rely upon representations made by a Declarant as stated in the Exhibit. In that case, the recipient may require a signature at the end of the document as certification that the information is accurate. An example is where a Declarant provides financial information to a lender on an exhibit.