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Safekeeping Your Legal Documents

You've planned ahead and have decided how you want your affairs to be handled. You have signed a Last Will and Testament (Will), a Durable Financial Power of Attorney (DFPOA), a Durable Medical Power of Attorney (DMPOA), and a Living Will. Now what should you do with these documents?

In order to Probate a Will, the original document must be located and submitted to the Probate Court. Therefore it is important that the original Will be available and easy to locate after the death of the individual. Many people keep their original Will in a desk drawer or a fire proof box or safe at home. However, there is a risk that this document could be stolen or accidentally destroyed if it is kept at home.

Another popular place for keeping the original Will is in a safe deposit box at a bank. The obvious possible difficulty with this is accessibility to the box after the individual's death. If the safe deposit box is held jointly with another person, the surviving joint owner will continue to have access to the box. However, if both owners should die at the same time, or if the surviving owner is incapacitated and cannot access the box, the Will would not be available. Rather, an order from the Probate Court would be required before anyone could access the original Will in the safe deposit box.

Similarly, the original DFPOA, under which an individual (the "Principal") selects an agent to make financial and property decisions if the Principal cannot, should be kept in a safe place. The agent may be able to act using a copy of the document, so the original document is not so crucial. Therefore, the original DFPOA may be kept in a safe place at home, with the location made known to the named agent. In addition, the Principal may chose to provide a copy to the agent. The potential difficulty with providing copies is that if the Principal later chooses to

revoke the DFPOA it is more difficult to make the revocation known to everyone who may be relying on the DFPOA, and to collect all of the copies of the document.

The two medical documents, the DMPOA and the Living Will, work together and so should be kept together. The DMPOA is the document whereby the Principal names an agent to make medical decisions on his behalf if he is not able to do so himself; the Living Will is an indication of that person's wishes regarding "end of life" decisions. Under these documents, an agent under a DMPOA can make any necessary medical decision for the Principal, including a "Living Will" type decision.

As such, it is important that the agent know where to locate these medical documents quickly and easily. The agent under a DMPOA can generally act using a copy of the document, so the original document is not so crucial. Therefore, these original documents may also be kept in a safe place at home, with the location made known to the named agent. It is often a good idea to provide the agent(s) with copies of these documents. This is particularly true if the agent(s) live geographically far from the Principal. It is also advisable to give copies to each of the Principal's physicians.

If the Principal later decides to revoke the DMPOA or the Living Will, a written revocation should be given to everyone who has a copy of that document so they will know that they can no longer rely on it.

Making plans for the future and signing legal documents to carry out those plans is only the beginning. When the documents have been put into place, it is important that they also be kept safe while remaining accessible. Only when this has been accomplished is the planning truly complete.

