A PRIMER:

NON-TAX ASPECTS OF ESTATE PLANNING IN 2006

WILLS AND PROBATE
EXECUTORS, TRUSTEES AND GUARDIANS
LIFE INSURANCE
ASSET PROTECTION PLANNING
REVOCABLE TRUSTS
GENERAL POWERS OF ATTORNEY
ADVANCE MEDICAL DIRECTIVES

ABA Real Property Probate and Trust Law Section
Community Outreach Program

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After spending 11 years as a tax/estate planning/trusts and estates partner at two large law firms, one in Washington, one in Virginia, Fred Tansill started his own firm, Frederick J. Tansill & Associates, 8 years ago in McLean/Tysons. Fred graduated from Brown University and received both his law degree and his masters degree in tax law from Georgetown. He is the only person to ever Chair both the Virginia and D.C. Bar Sections on Wills, Trusts and Estates. He has been elected a Fellow of the American College of Trust and Estate Counsel and was listed by *Washingtonian Magazine* in 2002 and 1997 as one of the "Best Lawyers in Washington" under the Estates and Trusts category. He is frequently quoted in *The Washington Post* on estate and trust and tax matters, and has been quoted in many other publications, including *The Wall Street Journal*. He lives in McLean, has three children, and has practiced in Northern Virginia for 24 years. He is celebrating his 32nd anniversary at the Bar.

Fred Tansill has specialized expertise in:

- Sophisticated Charitable Planning, including

  A. Private Foundations
  B. Charitable Lead Trusts
  C. Charitable Remainder Trusts
  D. Advised Funds at Community Foundations

- Asset Protection Planning, Domestic and Offshore

- International Estates and Offshore Trusts

- Closely-Held Businesses/Tax Planning

- Premarital and Post-Marital Agreements

- Sophisticated Planning to Reduce or Avoid Estate Tax, Gift Tax, Generation-Skipping Transfer Tax

I. WHY YOU SHOULD HAVE A WILL. (Slide 1)

A. A will is a simple, orderly procedure for succession of property.

B. If you do not have a will, your property will pass under the laws of your state of domicile relating to intestacy. (Slide 2)

1. e.g., Virginia Intestate Law (Slide 3):

- All to surviving spouse if he or she is the parent or grandparent of all descendants of decedent.
- If he or she is not a parent or grandparent of all, 1/3 of property to surviving spouse, 2/3 of property to children and descendants equally, per stirpes; if no spouse or children, all to parents; if none, all to siblings, nieces and nephews.

  NOTE: Maryland and the District of Columbia each have their own intestate schemes which are different from Virginia's and different from each other. (Slides 4-5)

2. You may not want to have your property pass as the law of intestacy will provide. For instance, you might prefer that less than all of your property should go to your spouse, the share going to minor children to be held in trust; if no spouse or children, to siblings, nieces and nephews, instead of to parents.

C. You can state your preference as to a guardian for your minor children in the event you and your spouse both die; the courts will normally honor your choice, if the party

named is willing.

D. You can create trusts for your wife, children, parents or other relatives for the following reasons:

1. To provide financial management and control for those who require it or those who would prefer to avoid the responsibility.

2. To preserve assets within the family, while providing the flexibility to meet needs.

3. To protect family assets from creditors of family members.

E. You can minimize federal estate taxes and possibly state death taxes.

F. You can minimize federal income taxes on the heirs of the estate by clarifying that untitled or jointly titled property is entirely included in the decedent's estate. This affords such property a full step up in income tax basis in the hands of the heir. This is helpful when there is strong reason to believe one of the spouses will die sooner than the other.

II. NEED TO COORDINATE DISPOSITION OF PROPERTY WHICH PASSES OUTSIDE OF THE WILL.

A. Many types of property are not controlled by your will but instead pass by operation of law or by contract to the surviving joint owner of the property or to the designated contract beneficiary. These "non-probate" assets include any properties held in joint tenancy with right of survivorship or tenancy by the entirety, as well as life insurance policies, annuities, individual retirement accounts, and various types of employee benefits. (Slide 6)

B. For individuals of relatively modest means, jointly titled properties and

properly designated contract benefits can be useful will substitutes, allowing assets to pass directly to the intended beneficiaries "outside the will" without the cost and delay associated with the probate process.

C. More affluent individuals should be aware of the need to coordinate jointly held properties and beneficiary designations with their overall estate plan as embodied in their will or revocable trust. For example, a married couple's estate plan typically includes "bypass" trusts designed to take full advantage of each spouse's estate tax unified credit and thereby to minimize the estate taxes owed at the death of the surviving spouse. If significant assets pass directly to the surviving spouse by survivorship or beneficiary designation, the predeceasing spouse's bypass trust could be unfunded or under funded and the survivor's estate could be "overloaded," resulting in unnecessary estate taxes.

III. SELECTION OF EXECUTORS, TRUSTEES.

A. It is important to give careful consideration to the selection of executors and trustees.

B. (Slide 7) Many people wish to name family members as fiduciaries, and this is probably the best choice if the family is harmonious and the estate and/or trust will not be unduly large or complicated to administer. Family members may be willing to serve without compensation, and are likely to be intimately acquainted with your financial affairs and with your personal wishes and desires. In Virginia, certain family members can serve as executors and trustees without a resident co-fiduciary even though they are not residents of the state. However, it may be preferable to name a neutral third party if family conflicts are anticipated, or to name a professional or an institutional fiduciary if the estate is large and/or the administration is expected to be complicated.

C. (Slide 8) Another option is to select a trusted professional advisor such as your attorney or accountant. (Generally stockbrokers are prohibited from serving.) These individuals may or may not have the skills necessary to administer a large or complex estate and the objectivity necessary to resolve conflicts among the beneficiaries. They may have extensive knowledge of your financial affairs which would be helpful. Such individuals may be reluctant to serve for various reasons including liability concerns, and if they do serve, they will almost certainly want to be compensated for their services. Also, if they are not residents of Virginia, they cannot serve without a resident co-fiduciary.

D. (Slide 9) Institutional fiduciaries (i.e., banks and trust companies) are experienced in estate and trust administration and for that reason can be a good choice for large or complicated estates or trusts. The tax law relating to trusts and estates gets more complicated all of the time, and the tax planning opportunities, even post mortem, become more important. Only sophisticated professionals and banks can handle the tax issues in a large or complicated estate or trust. Like professional advisors, institutional fiduciaries can be neutral and objective in disputes among beneficiaries. However, the fees charged by institutional fiduciaries may be prohibitive for individuals with modest estates. Remember, however, that if any individual trustee would hire an institution as investment manager -- and that would probably be prudent -- the 1% of principal per year fee generally charged by investment managers is the same as the trustee fee generally charged by most banks and trust companies, so, in effect, there is no extra cost to use a bank or trust company as trustee. They are a deep pocket to hold accountable if investments go awry or post mortem tax savings opportunities are missed.

E. For many reasons, it may be desirable to name co-executors and/or co-

trustees in your Will. You may want a family member to have a say in the administration but also to have the assistance of an experienced and objective third party such as a professional advisor or institutional fiduciary, or you may want two or three family members to handle the administration jointly. In Virginia the estate administration process can be simplified if all beneficiaries serve as co-executors:

- D.C. probate is now very simple and unsupervised regardless of who serves as Personal Representative. In Maryland, inventories and accounts are required even if all beneficiaries are Co-Personal Representatives, unless the estate qualifies as a small estate.
- In Virginia, the personal representatives who are also the only beneficiaries of the estate may file a statement in lieu of account. There is no limit on the number.
- In Virginia, if all residuary beneficiaries serve as co-personal representatives (or if all residuary beneficiaries serve as co-personal representatives and all pre-residuary bequests have been paid), they may waive the filing of inventories and accounts.

F. If you choose not to name family members as fiduciaries, you may nevertheless wish to give to family members the right to remove and replace a trustee who is not performing adequately. To assure neutrality you should require that a trustee removed must be replaced by a person who is not "related or subordinate" to the beneficiaries, and often it will be desirable to require that a replacement trustee must be a bank or trust company or attorney. Such a removal power should be accompanied by safeguards to prevent adverse tax consequences. Family members should also be given

the power to fill a vacancy in the office of trustee which occurs because of death, incapacity or resignation of the named trustee.

IV. GUARDIANS FOR MINORS, CUSTODIANS UNDER THE UNIFORM TRANSFERS TO MINORS ACT.

A. Guardianships under Virginia Law.

1. Although the distinction is sometimes blurred, there are two types of guardians -- guardians of the person and guardians of property. Under Virginia law, a parent has an absolute right to designate the guardian of property passing from the parent to his or her minor child. However, where the parent has substantial assets, it is usually advisable to leave assets in trust for the child so that the ultimate distribution may be postponed beyond the child's attaining majority (age 18 in Virginia). In the absence of the establishment of a trust or the creation of a guardianship by the parent, the parent's executor could name a custodian to administer the property for the minor under the Uniform Transfers to Minors Act (as discussed below).

2. Both parents are the joint natural guardians of the person of their minor child. If one parent dies or abandons the family, the other parent becomes the sole natural guardian. Although it is not clear that parents have an absolute right to name a guardian of the person of their child after the death of both parents, as a practical matter the court will usually honor such a designation, provided of course that the designated guardian is willing to serve and appears to be suitable. In the absence of parental designation, the selection of a guardian must be made by the court. In selecting guardians of the person of your minor children, you should keep the following in mind:

- Always name at least one successor guardian in the event that your

first choice is unable or unwilling to serve.

- Avoid naming couples as co-guardians, or if you do so, provide for succession in the event of separation, divorce, or death of one party.
- Guardians do not necessarily need to be named in your Will. Any writing demonstrating parental preferences could be provided to the court; however, since Wills are normally executed with formalities such as witnesses (and, in Virginia and many other jurisdictions, notaries) their authenticity may be easier to prove.
- Update your choice of guardian as often as changing circumstances require.
- Where there are sufficient funds, it may be advisable to give the trustee of any trusts established for your children the authority to expend funds for the guardian and the guardian's family as a way of indirectly providing for a more desirable environment for your minor children (e.g., expending trust funds to enlarge the guardian's home to provide more space for your children, or to buy a bigger home as co-owner with the guardian).

B. The Uniform Transfers to Minors Act.

1. D.C., Maryland and Virginia have all enacted the Uniform Transfers to Minors Act ("UTMA"). The UTMA allows greater flexibility in the types of transfers that may be made to a custodian than was permitted by the old Uniform Gifts to Minors Act ("UGMA"). A few of the major distinctions are highlighted below:

- Lifetime transfers (Slide 10) -- Under UGMA, only securities, cash,

annuities and ownership of life insurance could be transferred to a custodian; gifts of tangible personal property and real estate were not permitted, and life insurance proceeds could not be made payable to a custodian.

Under UTMA, any type of property interest may be transferred to a custodian, and a custodian may be named as the beneficiary of contractual rights such as life insurance or employee benefits.

- Transfers by intestacy or will or trust without specific authorization (Slide 11) -- Under UGMA, the personal representative or trustee could make a transfer only if specifically authorized by the will or trust.

  Under UTMA, fiduciary may make a transfer even in the absence of a will if he or she believes it is in the best interest of the minor and the transfer is not prohibited by or inconsistent with the governing instrument.

- Nomination of Custodian (Slide 12) -- Under UGMA, transferor could not revocably nominate custodian to receive property upon the happening of a future event. Only an adult member of the minor's family, the minor's guardian, or a trust company could be a successor custodian.

  UTMA allows the transferor to make a revocable nomination of a custodian and successor custodians to receive property upon the happening of a future event. Such a nomination may be made

in a will, trust, beneficiary designation, etc. A custodian may appoint any adult person or a trust company as successor custodian.

In custodial accounts it is also desirable to expressly indicate on the account documents "Hold to age twenty-one (21)." If you do not do that the default assumption is that the child is entitled to the account at age 18, when he or she might be a high school senior.

For tax reasons someone other than a parent of the child or any other person who may make gifts to the custodial account should serve as custodian.

V. LIFE INSURANCE.

A. Three major types of life insurance are term insurance, whole life insurance, and universal life insurance. (Slides 13 and 14)

1. Term life insurance provides coverage for a specific period of time. The policy provides only a death benefit and there is no cash value build-up. Generally, when the policy is renewed the premiums will be higher because the insured is older and statistically more likely to die. Term life insurance is usually more economical than whole life until clients approach old age. Term life insurance with fixed premiums for a period of years (such as 10, 15 or 20 years) is readily available.

2. Whole life insurance stays in force for the lifetime of the insured unless canceled. It provides both a death benefit and cash value build-up. The premiums will typically be set at the time the policy is purchased and will not increase as the insured ages.

3. Universal life, which was first marketed in the early 1980s, has both a

death benefit and a savings component. After payment of the initial premium, there are generally no contractually scheduled premium payments so long as the cash value is sufficient to pay the basic cost of protection (i.e. the death benefit) and other administrative charges. The insured may vary the level of the death benefit and premiums according to his or her current needs.

B. Most life insurance policies insure the life of a single individual. However, it is also possible to purchase a policy (known as a second-to-die or survivorship policy) insuring the joint lives of two individuals, typically a husband and wife. As its name suggests, a second-to-die policy pays a death benefit at the death of the survivor of the two insureds. Generally, premiums payable on second-to-die policies will be lower than a single life policy on either individual because the risk of death of two insureds is lower than that of a single insured. Second-to-die insurance is often purchased for the purpose of providing liquidity to pay estate taxes at the death of the surviving spouse. However, it may also be useful for non-tax purposes such as providing support for minor children that will not be needed until both parents are deceased.

C. When purchasing insurance, especially whole life and universal life, it is important to evaluate the financial soundness of the company issuing the policy. This is especially true today in light of the recent failure of some large insurance companies. There are rating services which evaluate the financial strength of insurance companies. One expert (Joseph Belth) has suggested that life insurance should not be purchased from a company that does not achieve the following minimum ratings from the four recognized rating services, A. M. Best, Moody's, Standard & Poors and Duff & Phelps:

Very high ratings from at least two (2) of the four (4) services:

A. M. Best	A++
Moody's	Aaa, Aa1, Aa2, Aa3
Standard & Poors	AAA, AA+, AA
Duff & Phelps	AAA, AA+

A rating not below the following minimums from any of the four (4) services:

A. M. Best	A+
Moody's	A-1
Standard & Poors	AA-
Duff & Phelps	AA

Ninety (90) companies currently meet these criteria. The rating guides are available at most public libraries and are certainly available to your insurance agent, whom you can ask for a written representation on the applicable ratings.

D. (Slide 15) Life insurance is probably most often purchased because an individual who is the primary or essential source of income for his or her family wants to provide a means to replace the earnings that will be lost at his or her death. Other reasons for the purchase of insurance include:

- Providing funds to pay debts, funeral and burial expenses, medical expenses incurred during last illness, and costs of administering the individual's estate.
- For business reasons, such as providing funds to the insured's business to offset economic loss caused by his or her death or funding a buy-sell agreement.
- Providing liquidity to pay estate taxes, for example if the insured wants to make sure that the family home or family business will not need to be sold to meet these obligations.

E. In some circumstances, it may be desirable to have the insurance owned by a trust rather than by the insured. This is often done to avoid inclusion of the policy proceeds in the insured's gross estate for federal estate tax purposes; however, there may also be non-tax reasons for trust ownership:

- The trust can be structured as a spendthrift trust so that policy proceeds would not be subject to the claims of the beneficiaries' creditors.
- The trust can carry out the insured's wishes regarding management and distribution of the proceeds. For example, the insured may want the proceeds to be held in trust for his children until they reach a certain age, and may wish to provide guidelines for the management and investment of the proceeds before they are ultimately distributed to the children.

VI. ASSET PRESERVATION PLANNING.

A. Background.

Generally, individuals who are currently solvent may take certain steps to shelter their assets from potential creditors if they do so in the context of traditional estate planning and without the intent to hinder, delay or defraud existing creditors. (Slide 16) Those likely to be interested in asset protection planning and who could benefit from such planning include (Slide 17):

- Physicians and other professionals concerned about the adequacy of their professional liability coverage.
- Persons engaged in a business from which personal liability could

arise.

- Persons seeking to avoid forced heirship provisions of state law, or to preserve assets for children of a prior marriage against spousal claims at divorce or death.
- Persons concerned about various liabilities (such as environmental liability) arising from ownership of real estate.
- Persons who wish to protect assets from creditors of other family members (e.g. a married person who wants to protect separate assets from spouse's creditors, a parent who wants to protect assets passing to a child from the child's creditors).

B. Techniques to protect assets from creditors. (Slide 18)

1. If your marriage is secure and only one spouse is facing a potential liability, consider shifting property owned jointly or owned solely by the spouse facing the liability into tenancy by the entirety. Property held in tenancy by the entirety is exempt from the claims of either spouse's creditors, but is subject to the claims of creditors of both spouses.

2. You may make outright gifts to family members or others who are "natural objects of your bounty." Gifted assets are immune from creditors' claims if you are solvent at the time of the gift, the gift does not render you insolvent, and the gift was not made with the intent to hinder, delay or defraud creditors.

3. Gifts may also be made in forms that are not subject to the claims of the beneficiaries' creditors, or at least are difficult to seize. Consider creating a family partnership, transferring assets (such as real estate) to the partnership and then making

gifts of interests in the partnership to family members. These limited partnership interests will be unattractive targets for seizure by creditors. Also consider creating a spendthrift trust for family members. Virginia law allows a donor to give up to a total of $500,000 to one or more spendthrift trusts.

4. You may purchase life insurance on your life or another person's life payable to a third party.

Upon the demise of the insured, even if creditors can prove fraudulent conveyance as to payment of premiums, they have no claim to the death benefit except to recover the value of fraudulently paid premiums. In Maryland, the cash value of insurance payable to the insured's spouse and/or children is exempt from the insured's bankruptcy creditors by state statute.

5. Consider selling assets to a child. If such sales are for full and adequate consideration, they cannot be challenged by creditors absent fraudulent intent. However, the consideration for the sale could be in an illiquid form such as a private annuity or long-term note that would be unattractive to creditors.

6. Consider a joint purchase with your child, where you purchase a life estate and your child purchases a remainder interest in the same property. A life estate interest is unattractive to creditors.

7. Incorporate your business so that under most circumstances only corporate assets will be subject to the corporation's creditors.

8. See on the author's website, www.fredtansill.com, the following articles and outlines which have useful, more comprehensive information regarding asset protection planning:

- "Why Asset Protection Planning"
- "Offshore Asset Protection Trusts"
- "Protection of Family Assets from Creditors"
- "Family Limited Partnerships"
- "Planning for Forever"

C. Creditor's Rights - Virginia Fraudulent Conveyance Law as an Example.

1. Generally, debtors are permitted by Virginia law to prefer one creditor to another.

2. Under Virginia law, every transfer made with the intent to hinder, delay or defraud creditors is voidable by a creditor. (However, a bona fide purchaser for value takes good title, assuming the transferee had no notice of the transferor's intent.) A suit by the creditor is necessary to void the conveyance, and the creditor has the burden of proving fraud by clear and convincing evidence. Fraud may be proved by circumstantial evidence, and courts have held that there are indicia or "badges" of fraud from which fraudulent intent may be inferred. If badges of fraud are shown, the burden of proof may shift to the debtor to proved the transfer was not fraudulent.

3. Gifts are voidable by existing creditors without a finding of intent to delay, hinder or defraud, but the creditor must prove that the debtor/donor was insolvent at the time the gift was made or was rendered insolvent by making the gift.

D. Bankruptcy Considerations - Pension Benefits.

The United States Supreme Court held in Patterson v. Shumate, 112 S. Ct. 2242 (1992), that the anti-alienation provisions which are required to be contained in ERISA-qualified pension plans serve to exempt a participant's interest in such a plan from

the claims of his bankruptcy creditors. In so holding, the Supreme Court adopted the view taken by the Fourth Circuit in In Re Moore, 907 F. 2d 1476 (4th Cir. 1990) and Shumate v. Patterson, 943 F. 2d 362 (4th Cir. 1991) and rejected the contrary view taken by other federal circuits. The Supreme Court has also extended some creditor protection to IRAs, which are not ERISA Plans.

E. Spousal Rights in D.C., Maryland and Virginia.

1. D.C., Maryland and Virginia law recognize the validity of premarital and postmarital agreements with respect to spousal property rights, including the disposition of property upon separation, marital dissolution, or death. Such agreements must be voluntarily executed and each party must make a fair and reasonable disclosure of his or her property and financial obligations prior to the execution of the agreement.

2. Absent such an agreement, division of property on divorce is within the equitable discretion of the court.

3. Absent such an agreement a spouse's right to inherit is to some extent guaranteed and may not be defeated. In general a surviving spouse is absolutely entitled to one-third of the predeceasing spouse's estate. Historically this was known as the "dower" or "curtesy" right. Today it is more commonly called the spouse's "elective share."

4. Before 1991, it was possible in Virginia to defeat completely the right of the surviving spouse to claim a significant share of the deceased spouse's estate, since spousal election rights applied only to the probate estate, and it was not hard to keep property out of the probate estate, e.g., by using a revocable trust. As of January 1, 1991, however, the surviving spouse has a right to claim a share of the "augmented estate,"

which includes many types of non-probate property including revocable trust assets. The augmented estate does not include property the decedent acquired by gift or inheritance or property irrevocably transferred to anyone other than the surviving spouse before 1991. In Maryland it is generally believed that revocable trusts do not defeat a spouse's statutory right but there is no express case law. Revocable Trust assets may not be subject to elective share in D.C., but there is no clear case law.

VII. REVOCABLE TRUSTS. (Slides 19 and 20)

A revocable trust is a trust established during a grantor's lifetime to which the grantor may transfer assets to be held, managed and distributed according to the terms of the trust instrument. Because the trust is revocable, it may be amended or revoked in its entirety at any time. For tax purposes, the grantor will pay income taxes during his lifetime on the income of the trust, and estate taxes will be due after his death on the trust assets as if the assets were still owned in his name. However, because the trust is a legal entity which owns the assets titled in the name of the trust, the trust assets will not be included in the grantor's probate estate. The revocable trust will contain provisions, identical to those which would be included in a will, as to the retention and distribution of assets after the death of the grantor. Thus, the trust may include testamentary provisions, including those which establish an estate tax plan to minimize death and generation-skipping transfer taxes.

In many cases, the grantor's purpose in setting up a revocable trust is specifically to avoid the probate process, including ancillary probate in a state other than the domiciliary state in which the grantor had an interest in real estate, and to avoid the public disclosure of the grantor's dispositive plan and the value of assets associated with probate. Avoiding probate can save the grantor's estate the legal and other expenses of probate (as well as

the probate tax and post mortem court accountings on testamentary trusts in Virginia), and can be a much more efficient means of transferring assets to the beneficiaries of the grantor's estate. The grantor should still execute a will to provide for the disposition of assets which are not included in the trust. Typically the will would pour-over most of such assets to the trust.

Another advantage of a revocable trust is that it not only provides for the management of the grantor's assets while he is alive and competent, but also provides a smooth transition for the management of his assets in the event of his incapacity or death. The trustee will be able to continue the administration of the trust, and provide for the grantor's family's needs without interruption, whereas in the absence of a trust, a court-appointed conservator or the executor of ones's estate would have to start anew the process of gathering, managing and distributing the grantor's assets.

There is, of course, a cost involved in establishing and maintaining a trust, especially if a corporate fiduciary or individual non-family member acts as a trustee. However, the grantor may serve as trustee of his or her own trust as long as he or she is alive and competent. In addition, one's financial situation and estate planning goals may not necessitate the expense or the management of a revocable living trust. The costs versus the benefits of a revocable living trust should be evaluated for each individual.

See the author's website, www.fredtansill.com for a comprehensive article on the use of Revocable Living Trusts, an outline of the advantages and disadvantages of such trusts: "Are Revocable Trusts Overused and Oversold."

VIII. GENERAL POWERS OF ATTORNEY. (Slide 21)

A General Power of Attorney sets out in a very precise and detailed manner all of

the powers you want to grant to your named attorney-in-fact to enable such attorney to act in your stead as your agent to manage your financial affairs. Because of the broad powers given to the attorney, the person named should be chosen with the utmost care. A power of attorney typically gives the attorney the ability to deposit checks, to pay your bills, to enter into and execute contracts, to manage and sell real estate owned by you, to borrow and lend money, to vote in your place as a stockholder or a partner, to sign tax returns, to add property to a revocable trust (if you have one) or to create a revocable trust on your behalf, to act for you in any legal action instituted on your behalf or against you, possibly to make gifts on your behalf, and in general to manage and conduct all of your financial affairs as fully as you are able to so do yourself. Virginia, Maryland and the District of Columbia now permit so-called "durable" powers of attorney which remain effective despite the subsequent disability or incapacity of the person granting the power.

An important benefit of a general power of attorney is that, in the event of the principal's incapacity, no public hearing will be required to prove incompetence or to appoint a court supervised guardian or conservator to manage his affairs. The attorney-in-fact will simply discreetly step in and take over his affairs without any disruption in the financial management.

Great care must be taken in the use of a general power of attorney, because the named attorney normally is given immediate power and control over the principal's affairs, even though the principal may intend such powers to be exercised only in the event of incapacity. While technically a general power of attorney may be drafted to "spring" into effect only upon the principal's incapacity, that is normally not a prudent approach as it requires a determination that the principal is incapacitated -- exactly what the grantor of

the power wants to avoid. In fact, it could send the matter to court for a determination.

To offer a measure of protection against unwanted exercise of authority under a general power of attorney while the granting party is competent, the original power may be entrusted to the drafting attorney or another with appropriate instructions as to the circumstances in which it should be released to the nominated attorney-in-fact.

(See Exhibit A for a form of the General Power of Attorney. See Exhibit B for a form of Letter of Instructions Regarding Custody of the General Power of Attorney.)

IX. ADVANCE MEDICAL DIRECTIVES. (Slide 22)

Our advance medical directives, depending on the statutory requirements of the jurisdiction, take the form of a power of attorney for health care, a living will (a natural death act declaration), or a combination of those two documents called an "advance medical directive." The purpose of the documents is to express your intent as to how you want to be medically treated (or not treated) if you become unable to so express yourself due to physical or mental disability, whether it be short-term or long-term. The documents also provide the physician with immunity, and seek to relieve your family of the ethical and moral burden of making those decisions without guidance from you. Furthermore, the expression of your wishes helps to avoid conflicts among family members and between family members and your health care providers, and also to avoid public court proceedings to resolve such conflicts.

The federal Patient Self-Determination Act (PSDA), enacted in 1991, requires all hospitals, skilled and unskilled nursing facilities, home health and personal care providers, hospice programs and prepaid health care organizations which participate in the Medicare or Medicaid programs to provide written information to every adult patient

regarding their rights to make decisions concerning their medical care through an advance medical directive, including their right to accept or refuse surgical treatment.

In compliance with the PSDA and in an effort to have one consistent statute regarding the standards for Advance Medical Directives, Virginia enacted the Virginia Health Care Decisions Act in 1992. The statute requires that certain provisions be included in such documents, and suggests a form which may be used. The Virginia form combines the power of attorney for health care and the living will. A copy of the form Advance Medical Directive which we use is shown at Exhibit C.

Maryland law also uses an Advance Directive, and a sample is attached as Exhibit D.

The District of Columbia currently has in place a statute which specifies that its citizens may execute a Power of Attorney for Health Care. The Power of Attorney for Health Care details not only when the document is to take effect, but also describes the authority the attorney has to examine medical records and be informed of all facts relevant to your condition and treatment. It directs the attorney to make decisions and act in accordance with your wishes as expressed in the document or as made known to your attorney. There is a blank to be filled in with instructions regarding "life prolonging procedures." A sample D.C. form is attached as Exhibit E.

EXHIBITS

EXHIBIT A

THIS POWER OF ATTORNEY AUTHORIZES THE PERSON NAMED BELOW AS MY ATTORNEY-IN-FACT TO DO ONE OR MORE OF THE FOLLOWING: TO SELL, LEASE, GRANT, ENCUMBER, RELEASE OR OTHERWISE CONVEY ANY INTEREST IN MY REAL PROPERTY AND TO EXECUTE DEEDS AND ALL OTHER INSTRUMENTS ON MY BEHALF, UNLESS THIS POWER OF ATTORNEY IS OTHERWISE LIMITED HEREIN TO SPECIFIC REAL PROPERTY.

GENERAL POWER OF ATTORNEY

Know all men that I, _____, of _____,

social security number _____, do hereby nominate, constitute and appoint

_____ (hereinafter referred to as "attorney-in-fact" or "attorney") as my true and lawful attorney-in-fact for me, and in my name, place and stead, and on my behalf, and for my use and benefit, to manage and conduct all my affairs as fully and effectually to all intents and purposes as I could do if personally present.

This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney-in-fact. The attorney-in-fact named above is hereby authorized to act for me as follows:

1. To ask, demand, sue for, recover, and receive all manner of goods, chattels, debts, rents, interest, sums of money, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension and retirement benefits, insurance

benefits and proceeds, any and all documents of title, choses in action and demands whatsoever, due or hereafter to become due and owing, or belonging to me, and to make, give and execute acquittances, receipts, releases, satisfactions, or other discharges for the same, whether under seal or otherwise, as such attorney shall think fit or advised.

2. To settle, compromise or make allowances in respect to any debt or demand whatsoever with any person or legal entity which now is or shall at any time hereafter become due and payable to or by me, and to take and receive or pay any compensation or dividend thereof or thereupon, and to give or accept releases or other discharges for the whole of such debts or demands, or to settle, compromise or submit to arbitration every such debt or demand and every other right, matter and thing due to or concerning me as my attorney-in-fact shall think best, and for that purpose to enter into and execute and deliver such bonds of arbitration or other instruments as my attorney-in-fact may deem advisable in the circumstances.

3. To deposit any moneys which may come to said attorney's hands as such attorney-in-fact with any bank, savings and loan, credit union, brokerage firm, trust company, or other firm or institution in business to accept deposits or investments, either in my or the attorney's own name, and any of such money or other money to which I am entitled which now is or shall be so deposited, to withdraw and either employ as the attorney shall think fit in the payment of any debts or interest payable by me, or taxes, assessments, insurance, and expenses due and payable or to become due and payable on account of my real and personal estate, or for any of the purposes herein mentioned, or otherwise for my use and benefit, or to invest in my or the attorney's own name in any stocks, shares, bonds, securities or other property, real or personal, as said attorney may

think proper, and to receive and give receipts for any interest, dividend, rental or other income arising from such investments, and with respect to all and any such investments or other investments, to vary or dispose of for my use and benefit as said attorney may think fit; and to enter any safe deposit box over which I have signatory authority, and to remove any and all articles belonging to me, and to close and abandon such box.

4. To make, draw, accept, execute, endorse, discount, deliver or otherwise deal with any bills of exchange, checks, withdrawal receipts, deposits, notes, drafts, options, warrants, acknowledgments or any other commercial paper or commercial or mercantile instruments, of banks, savings and loan, mutual funds or other institutions or associations, in my name or in the name of my said attorney-in-fact.

5. To enter into, execute, acknowledge, sign, seal and deliver any and all contracts, agreements, deeds, trust deeds, leases, mortgages, assignments of mortgage, extensions of mortgage, satisfactions of mortgage, releases of mortgage, subordination agreements, applications, options, covenants, conveyances, security agreements, bills of sale, assignments, documents of title, bonds, debentures, stock certificates, proxies and any other document, instrument of any kind or nature whatsoever in connection therewith and affecting any and all property, real or personal, presently mine or hereafter acquired, located anywhere, which my said attorney-in-fact may deem necessary or advantageous for my interests. This power shall specifically include the power to act in all matters related to all Federal and State taxes or other taxes of whatever nature for any period, including the power to sign returns, handle audits, settle claims, receive information of any kind, collect, receive and endorse refunds, execute waivers and consents, delegate authority or substitute another representative.

6. To borrow any sum or sums of money on such terms and with such security, whether real or personal property, as my attorney-in-fact may think fit, and for that purpose to execute all promissory notes, bonds, mortgages and other instruments which may be necessary or proper. My attorney-in-fact is expressly authorized to borrow funds for purposes of exercising stock options and warrants.

7. To sell, either at public or private sale, or exchange any part or parts of my real estate or personal property for such consideration and upon such terms as my attorney-in-fact shall think fit, and to execute and deliver good and sufficient deeds or other instruments for the conveyance or transfer of the same, with such covenants of warranty or otherwise as said attorney shall see fit, and to give good and effectual receipts for all or any part of the purchase price or other consideration, and to give direction to any persons holding property in my name, on my behalf, to make such sale, assignments or other conveyance as my attorney-in-fact may direct.

8. To enter into and upon any lands, real estate, tenements, houses, stores, building or parts thereof, belonging to me or to the possession of which I may become entitled, and to take possession of such of them as may become vacant or unoccupied; and to let, manage and improve such property and any part thereof, and to repair or otherwise improve or alter any buildings thereon, and to insure them.

9. To contract with any person for leasing for such periods, at such rents and subject to such conditions as my attorney shall see fit, all or any of my said real estate, and to execute all such leases and contracts as shall be necessary or proper in that behalf, and to give notice to quit to any tenant or occupier thereof, and to recover from all tenants and occupiers thereof or of any part thereof all rents, arrears of rent and sums of

money which now are or shall hereafter become due and payable in respect thereof, and upon nonpayment thereof or any part thereof to take all necessary or proper means and proceedings for terminating the tenancy or occupation of such tenants or occupiers, and for ejecting the tenants or occupiers and recovering the possession thereof.

10. To receive every sum of money which now is or hereafter shall be due or belonging to me upon the security or by virtue of any mortgage or deed of trust, and on receipt of the full amount secured thereby to execute a good and sufficient release or other discharge of such mortgage or deed of trust by deed of release or otherwise.

11. To engage, employ and dismiss any agents, attorneys at law, accountants, brokers, clerks, servants, or other persons in and about the performance of these presents as my attorney-in-fact shall think fit.

12. To vote at the meetings of stockholders or partners or other meetings of any corporation or company or partnership or any other type of business or investment entities recognized by civil or common law or other local law, or otherwise to act as my attorney-in-fact or proxy in respect of any stocks, shares, options, including stock options, partnership interests (general or limited) or other instruments or business or investment interests now or hereafter held by me, and for that purpose to execute any proxies or other instruments and to exercise any stock or other investment options on my behalf.

13. To commence, prosecute or discontinue on my behalf any suits or actions or other legal or equitable proceedings for the recovery of any of my lands or for any goods, chattels, debts, cause or thing whatsoever, due or to become due or belonging to me, and to prosecute, maintain, and discontinue the same, if said attorney shall deem proper.

14. To appear, answer and defend in all actions and suits whatsoever which

shall be commenced against me and also for me and in my name to compromise, settle, and adjust, with each and every person or persons, all actions, accounts due, or demands, existing or to exist between me and them or any of them, and in such manner as my said attorney-in-fact shall think proper; and I give to my said attorney-in-fact power and authority to do, execute, and perform and finish for me and in my name all those things which shall be expedient and necessary, or which my said attorney-in-fact shall judge expedient and necessary, concerning such disputes, or any of them, as fully as I could do if personally present, hereby ratifying and confirming whatever my said attorney-in-fact shall do or cause to be done concerning the disputes, and any part thereof.

15. To take all steps and remedies necessary and proper for the conduct and management of my business affairs, and for the recovery, receiving, obtaining, and holding possession of any lands, tenements, rents or real estate, goods and chattels, debts, interest, demands, duties, sum or sums of money or any other thing whatsoever, located anywhere, that is, are, or shall be, by my said attorney-in-fact, thought to be due, owing, belonging to or payable to me in my own right or otherwise.

16. To exercise any powers and duties vesting in me, whether solely or jointly, with any other or others, as executor, administrator or trustee or in any other fiduciary capacity, so far as such power or duty is capable of being validly delegated.

17. To substitute and appoint in said attorney's place and stead, or to serve as co-attorney with said attorney, on such terms and at such salary or compensation as said attorney shall think fit, one or more other or successor attorneys-in-fact to exercise for me as my attorney-in-fact or attorneys-in-fact any or all of the powers and authorities hereby conferred, and to revoke any such appointment from time to time, and to substitute or

appoint any other or others in the place of such attorney-in-fact or attorneys-in-fact as the said attorney-in-fact shall from time to time think fit.

18. With respect to the real property listed hereinbelow, or any real property interests of any kind (including condominiums and cooperative interests in real estate) owned or acquired by me, to sell for such consideration as the attorney deems appropriate, or to transfer gratuitously, to execute and deliver deeds, or take any other act generally authorized by this Power of Attorney, dealing with such property with full power and discretion as I could:

_____

_____

19. To create a revocable trust or irrevocable lifetime trust on my behalf for my benefit and/or for the benefit of my descendants, to contribute property of mine to such trust from time to time, and, in the case of a revocable trust established by me or by such attorney-in-fact, to revoke any such trust created by such attorney-in-fact if the attorney-in-fact deems that to be appropriate. Any such trust must contain the same provisions as my then current Will with respect to the disposition of trust property after my death. If the creation of such an irrevocable trust would constitute a completed gift, it must be done in compliance with Paragraph 22. of this General Power of Attorney, which governs the power of my attorney-in-fact to make gifts. My attorney-in-fact shall not have any right to revoke or alter any will I have made, nor have any right or power to alter, amend, revoke, terminate or withdraw from any trust which I have created.

20. To disclaim any interest that might otherwise pass to me by gift, bequest, inheritance or contract.

21. My attorney-in-fact shall not have any right to revoke or alter any Will I have made nor have any right or power to alter, amend, revoke, terminate or withdraw from any trust which I may have created.

22. To make gifts on my behalf to my children or grandchildren, to file state and federal gift tax returns, and to file a tax election to split gifts with my spouse. Gifts to any of my children must be made equally to all of them. Gifts to any of my grandchildren must be made equally to all of them. The power to make gifts to my children may be exercised only (a) by my spouse while my spouse serves as attorney-in-fact, or (b) in the event one or more of my children are serving as attorney-in-fact, by _____, who/which may serve as my attorney-in-fact for that purpose and no other if my children who are serving as attorney-in-fact consent to its exercising this power while my children act as my attorney-in-fact for all other purposes. No one may receive a gift in any year in excess of the federal gift tax annual exclusion, presently $12,000. My attorney-in-fact shall not make gifts that discharge any of his or her own legal obligations, including obligations of support. _____ shall not be obligated to make gifts if requested to do so by my children; rather, he/she/it may elect to make or not to make such gifts in his/her/its discretion, acting in a fiduciary capacity as my attorney-in-fact.

23. To exercise any right, option or privilege accorded to me under or in connection with any life insurance policy, including, but not limited to, the right to surrender the policy, make a policy loan, assign ownership of the policy and change the beneficiary. In changing the beneficiary of any insurance policy of mine and in transferring ownership of any insurance policy of mine, in each case such change or transfer shall only be to any family member or to any trust benefitting any family member or members.

24. To make any pension, profit-sharing, Keogh, IRA, or other qualified or non-qualified deferred compensation contribution or election of any kind on my behalf, including any contribution or election with respect to stock options.

25. To represent me in all tax matters and proceedings before all offices and officers of the Internal Revenue Service, the **[Virginia Department of Taxation or the District of Columbia Department of Finance and Revenue or the Maryland Comptroller of Treasury, Revenue Division]** and any other tax authority. To prepare, sign, and file, federal, state or local income, gift, FICA, and other tax returns of all kinds (including, but not limited to, U.S. Forms 1040 and 709 and all related forms and schedules) with respect to any tax periods between 1990 and 2070. To file claims for refunds, requests for extensions of time, ruling requests, petitions to Tax Court or other courts regarding tax matters, and any and all other tax-related documents, including, without limitation, receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Sections 2032A, 2057, 2513, and 2652(a)(2), or any successor provisions), closing agreements, Form 2848 and any other power of attorney form required by the Internal Revenue Service or other taxing authority, with respect to any tax periods between 1990 and 2070. To pay taxes due, collect refunds, receive and negotiate checks in payment of any federal or state tax refund, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authorities. To exercise any elections I may have under federal, state or local tax law.

26. In general to do all other acts and things whatsoever concerning my estate, real or personal property, and affairs, or to concur with persons jointly interested with

myself therein in doing all acts and things herein either particularly or generally described, as fully and effectually to all intents and purposes as I could do if personally present.

27. I request that no guardianship proceeding for my property be commenced in the event of my disability. If any court appoints a guardian of my person and/or my property, I direct that my attorney-in-fact shall serve as guardian, and if more than one attorney-in-fact is serving under this Power of Attorney, the attorney-in-fact first named shall serve as guardian. I direct that any guardian shall be excused from giving bond.

28. I hereby ratify and confirm, and promise at all times to ratify and confirm, all and whatsoever my attorney-in-fact as well as any attorney-in-fact or attorneys-in-fact by said attorney hereunder substituted shall lawfully do or cause to be done by virtue of these presents, including anything which shall be done between the revocation of these presents by my death or in any other manner and notice of such revocation reaching my attorney-in-fact; and I hereby declare that as against me and all persons claiming under me, including my heirs and assigns, everything which my attorney-in-fact shall do or cause to be done in pursuance hereof after such revocation as aforesaid shall be valid and effectual in favor of any person claiming the benefit thereof who shall not have had notice of such revocation before the performance of such act in pursuance hereof.

29. The rights, powers and authority of said attorney-in-fact granted in this instrument shall commence and be in full force and effect on the date of execution hereof, and such rights, powers and authority shall remain in full force and effect thereafter until I give notice in writing to said attorney-in-fact that such power is terminated. Such notice of termination shall be effective upon receipt by the attorney-in-fact.

30. This Power of Attorney shall not be affected by my subsequent disability or

incapacity, or by the lapse of time. I specifically authorize my Attorney to act as such attorney-in-fact during the continuance of this Power and without regard to whether or not I am under any disability.

31. In the event that my Attorney named herein shall die, or become incapable of acting as my Attorney, I hereby appoint _____ to be my Attorney in the place of said Attorney, with power to exercise all or any of the powers or authorities hereinbefore conferred on the said Attorney, in as full and ample a manner in all respects as if the name of the substitute had been hereinbefore inserted instead of the said Attorney.

And I do hereby ratify and confirm all whatsoever my said substitute Attorney shall do or cause to be done by virtue of these presents.

32. For and in consideration of services as my attorney-in-fact, any aforenamed attorney-in-fact or successor attorney-in-fact shall be entitled from any assets held by or controlled by my attorney-in-fact to reasonable compensation commensurate with the efforts expended by such attorney-in-fact in such capacity, and to be reimbursed for costs, expenses and liabilities incurred in connection with or imposed upon the assets held or upon the attorney-in-fact in his or her capacity as such. In addition, an attorney-in-fact shall be entitled to be reasonably compensated for services rendered in any other non-fiduciary capacity to or for my estate. No attorney-in-fact shall be liable for any loss or other injury to the assets held by my attorney-in-fact or for which my attorney-in-fact might otherwise be deemed responsible unless such loss is occasioned by willful fraud, gross negligence or other misconduct. Persons dealing with my attorney-in-fact in his or her capacity as such shall look solely to my assets to satisfy any liability and not to the

personal and private assets of the attorney-in-fact. If such a liability is imposed on an attorney-in-fact in connection with the performance of his or her rights or duties hereunder, such attorney-in-fact shall be entitled to indemnification and reimbursement from me and my assets.

33. In the event that two or more parties are named to serve simultaneously as my attorney-in-fact, they shall act jointly in all matters unless any one of them shall delegate all or part of his or her or its power and authority in writing to another or other named attorney(s) for a specific or definite period of time, in which case the one or ones to whom such power and authority is delegated shall act alone. The words "attorney-in-fact" or "attorney", wherever they appear herein, shall be read to include two or more attorneys acting jointly whenever such are named.

34. This General Power of Attorney shall be construed and governed in all respects by the laws of the **[Commonwealth of Virginia or District of Columbia or State of Maryland].**

IN WITNESS WHEREOF, I have hereunto set my hand and seal at _____, this _____ day of _____, 2006.

_____

STATE OF _____)
) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the State and County aforesaid, hereby certify that _____, whose name is signed to the foregoing General Power of Attorney, personally appeared before me and acknowledged before me the same.

Given under my hand and seal this ____ day of _____, 2006.

_____
Notary Public

My Commission expires:_____

EXHIBIT B

_____, 2006

Frederick J. Tansill, Esquire
Frederick J. Tansill & Associates, LLC
1355 Beverly Road, Suite 215
McLean, Virginia 22101

Re: Custody of General Power of Attorney

Dear Mr. Tansill:

I appreciate your taking custody for safekeeping of my General Power of Attorney.

With respect to the General Power of Attorney, I would like you to release it to a named attorney only in three events:

1. I so direct your firm, orally or in writing;

2. Your firm receives written notice of my incompetence from my physician; or

3. Your firm receives a written request for my Power signed by any two of the following persons: _____, _____, _____.

I would expect that in the event of circumstance 2. or 3. you would make a reasonable attempt to contact me to verify my incapacity, but I authorize you to rely on the procedures set out in 2. or 3. without more.

Very truly yours,

_____

EXHIBIT C

ADVANCE MEDICAL DIRECTIVE

I, _____, of _____, willfully and voluntarily make known my desire and do hereby declare:

If at any time my attending physician should determine that (1) I have a terminal condition or (2) I am in a persistent coma from which there is no reasonable possibility of recovery to a cognitive life, where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I hereby appoint my spouse _____ of _____, telephone number _____, as my agent to make health care decisions on my behalf as authorized in this document. If my spouse is not reasonably available or is unable or unwilling to act as my agent hereunder, then I hereby appoint _____ of _____ _____, telephone number _____, as my agent hereunder.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be

incapable of making an informed decision about providing, withholding or withdrawing medical treatment. The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed medical decision or unable to make a rational evaluation of the risks and benefits of a proposed medical decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a second physician or licensed clinical psychologist after a personal examination of me and shall be certified in writing. Such certification shall be required before treatment is withheld or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every 180 days thereafter while the treatment continues.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known by my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks and side effects associated with treatment or non-treatment. My agent shall not authorize a course of treatment which it knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what treatment choice I would have made on my own behalf, then my agent shall make a choice for me based upon what my agent believes to be in my best interests.

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of medical care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. However, in no event will I be denied water for thirst. This authorization specifically includes the power to consent to the administration of dosages of pain relieving medication in excess of standard dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or inadvertently hastens my death. This authorization also specifically includes the power to direct and consent to the writing of a "No Code" or "Do Not Resuscitate Order" by any health care provider.

B. To request, receive and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, adult home or other medical care facility; and

E. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

My agent shall not be liable for the costs of treatment pursuant to its authorization, based solely on that authorization.

This advance directive shall not terminate in the event of my disability.

I understand that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") offers me some medical/health information confidentiality protection. For the purposes of this Advance Medical Directive, I hereby waive any confidentiality rights I may have under HIPAA and I further authorize all health care providers and facilities and any other person or entity in possession of medical/health records concerning me to disclose and deliver to my agent named herein all information, including all protected health information. I specifically authorize and consent to the disclosure described above.

By signing below I indicate that I am emotionally and mentally competent to make this advance directive and that I understand the purpose and effect of this document.

WITNESS my hand and seal this _____ day of _____, 2006.

_____

The declarant signed the foregoing advance medical directive in my presence. I am not the spouse or a blood relative of the declarant.

_____ _____
Witness Address

_____ _____
Witness Address

EXHIBIT D

ADVANCE DIRECTIVE

PART A
APPOINTMENT OF HEALTH CARE AGENT
(Optional Form)

(Cross through this whole part of the form if you do not want to appoint a health care agent to make health care decisions for you. If you do want to appoint an agent, cross through any items in the form that you do not want to apply.)

1. I, _____, residing at _____

_____

appoint the following individual as my agent to make health care decisions for me:

_____

_____

(Full Name, Address, and Telephone Number of Agent)

Optional: If this agent is unavailable or is unable or unwilling to act as my agent, then I appoint the following person to act in this capacity:

_____

_____

(Full Name, Address, and Telephone Number of Back-up Agent)

2. In accordance with the Health Insurance Portability and Accountability Act ("HIPAA") , a health care agent is a personal representative and is entitled to request and receive protected health information.

3. My agent has full power and authority to make health care decisions for me, including the power to:

   A. In accordance with HIPAA and as my personal representative, request, receive, and review any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and other protected health information, and consent to disclosure of this information;

   B. Employ and discharge my health care providers;

   C. Authorize my admission to or discharge from (including transfer to another facility) any hospital, hospice, nursing home, adult home, or other medical care facility; and

   D. Consent to the provision, withholding, or withdrawal of health care, including, in appropriate circumstances, life sustaining procedures.

4. The authority of my agent is subject to the following provisions and limitations:

_____

_____

5. If I am pregnant, my agent shall follow these specific instructions:

_____

_____

6. My agent's authority becomes operative *(**initial** only the one option that applies)*

_____ When my attending physician and a second physician determine that I am incapable of making an informed decision regarding my health care; provided however, when this document is signed, each individual identified in paragraph (1) is, in accordance with HIPAA, my personal representative for all purposes related to any assessment of my capacity to make an informed decision regarding my health care; or

_____ When this document is signed

7. My agent is to make health care decisions for me based on the health care instructions I give in this document and on my wishes as otherwise known to my agent. If my wishes are unknown or unclear, my agent is to make health care decisions for me in accordance with my best interest, to be determined by my agent after considering the benefits, burdens, and risks that might result from a given treatment or course of treatment, or from the withholding or withdrawal of a treatment or course of treatment.

8. My agent shall not be liable for the costs of care based solely on this authorization.

By signing below, I indicate that I am emotionally and mentally competent to make this appointment of a health care agent and that I understand its purpose and effect.

_____ _____

(Date) (Signature of Declarant)

The declarant signed or acknowledged signing this appointment of a health care agent in my presence and, based upon my personal observation, appears to be a competent individual.

_____ _____

(Witness) (Witness)

_____ _____

_____ _____

_____ _____

(Signatures and Addresses of Two Witnesses)

PART B
HEALTH CARE INSTRUCTIONS
(Optional Form)

(Cross through this whole part of the form if you do not want to use it to give health care instructions. If you do want to complete this portion of the form, ***initial*** *those statements you want to be included in the document and* ***cross through*** *those statements that do not apply.)*

If I am incapable of making an informed decision regarding my health care, I direct my health care providers to follow my instructions as set forth below. ***(Initial*** *all those that apply)*

1. If my death from a terminal condition is imminent and even if life-sustaining procedures are used there is no reasonable expectation of my recovery:

   _____ I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

   _____ I direct that my life not be extended by life-sustaining procedures, except that if I am unable to take food by mouth, I wish to receive nutrition and hydration artificially.

2. If I am in a persistent vegetative state, that is, if I am not conscious and am not aware of my environment nor able to interact with others, and there is no reasonable expectation of my recovery:

   _____ I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

   _____ I direct that my life not be extended by life-sustaining procedures, except that if I am unable to take food by mouth, I wish to receive nutrition and hydration artificially.

3. If I have an end-stage condition, that is, a condition caused by injury, disease, or illness, as a result of which I have suffered severe and permanent deterioration indicated by incompetency and complete physical dependency and for which, to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective:

   _____ I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

   _____ I direct that my life not be extended by life-sustaining procedures, except that if I am unable to take food and water by mouth, I wish to receive nutrition and hydration artificially.

4. _____ I direct that, no matter what my condition, medication to relieve pain and suffering not be given to me if the medication would shorten my remaining life.

5. _____ I direct that, no matter what my condition, I be given all available medical treatment in accordance with accepted health care standards.

6. If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

_____

_____

_____

7. I direct *(in the following space, indicate any other instructions regarding receipt or nonreceipt of any health care)*:

_____

_____

_____

By signing below, I indicate that I am emotionally and mentally competent to make this Advance Directive and that I understand the purpose and effect of this document.

_____ _____

(Date) (Signature of Declarant)

The declarant signed or acknowledged signing these health care instructions in my presence and, based upon my personal observation, appears to be a competent individual.

_____ _____

(Witness) (Witness)

_____ _____

_____ _____

_____ _____

(Signatures and Addresses of Two Witnesses)

LIVING WILL
(Optional Form)

If I am not able to make an informed decision regarding my health care, I direct my health care providers to follow my instructions as set forth below. (*Initial* those statements you wish to be included in the document and *cross through* those statements which do not apply.)

A. If my death from a terminal condition is imminent and even if life-sustaining procedures are used there is no reasonable expectation of my recovery:

_____ I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

_____ I direct that my life not be extended by life-sustaining procedures, except that if I am unable to take food by mouth, I wish to receive nutrition and hydration artificially.

_____ I direct that, even in a terminal condition, I be given all available medical treatment in accordance with acceptable health care standards.

B. If I am in a persistent vegetative state, that is, if I am not conscious and am not aware of my environment nor able to interact with others, and there is no reasonable expectation of my recovery:

_____ I direct that my life not be extended by life-sustaining procedures, including the administration of nutrition and hydration artificially.

_____ I direct that my life not be extended by life-sustaining procedures, except that if I am unable to take food by mouth, I wish to receive nutrition and hydration artificially.

_____ I direct that, even in a terminal condition, I be given all available medical treatment in accordance with acceptable health care standards.

C. If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

_____

_____

_____

By signing below, I indicate that I am emotionally and mentally competent to make this Living Will and that I understand its purpose and effect.

_____ _____

(Date) (Signature of Declarant)

The declarant signed or acknowledged signing this Living Will in my presence and, based upon my personal observation, the declarant appears to be a competent individual.

_____ _____

(Witness) (Witness)

_____ _____

_____ _____

_____ _____

(Signatures and Addresses of Two Witnesses)

ORGAN DONATION ADDENDUM

[Note: If you want to be an organ donor, you can attach this page to your living will or advance directive. Sign it and have it witnessed.]

Upon my death, I wish to donate:

_____ Any needed organs, tissues, or eyes.
_____ Only the following organs, tissues, or eyes:

_____
_____
_____

I authorize the use of my organs, tissues, or eyes:

_____ for transplantation;
_____ for therapy;
_____ for research;
_____ for medical education;
_____ for any purpose authorized by law.

I understand that before any vital organ, tissue, or eye may be removed for transplantation, I must be pronounced dead. After death, I direct that all support measures be continued to maintain the viability for transplantation of my organs, tissues, and eyes until organ, tissue and eye recovery has been completed.

I understand that my estate will not be charged for any costs associated with my decision to donate my organs, tissues, or eyes or the actual disposition of my organs, tissues, or eyes.

By signing below, I indicate that I am emotionally and mentally competent to make this organ donation addendum and that I understand the purpose and effect of this document.

_____ _____
(Date) (Signature of Declarant)

The declarant signed or acknowledged signing this organ donation addendum in my presence and based upon my personal observation appears to be a competent individual.

_____ _____
(Witness) (Witness)

(Signature of Two Witnesses)

EXHIBIT E

"POWER OF ATTORNEY FOR HEALTH CARE

"I, _____, hereby appoint:

D.C.

_____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

as my attorney in fact to make health-care decisions for me if I become unable to make my own health-care decisions. This gives my attorney in fact the power to grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure. My attorney in fact also has the authority to talk to health-care personnel, get information and sign forms necessary to carry out these decisions.

"If the person named as my attorney in fact is not available or is unable to act as my attorney in fact, I appoint the following person to serve in the order listed below:

1. _____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

2. _____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

"With this document, I intend to create a power of attorney for health care, which shall take effect if I become incapable of making my own health-care decisions and shall continue during that incapacity.

"My attorney in fact shall make health-care decisions as I direct below or as I make known to my attorney in fact in some other way.

"(a) STATEMENT OF DIRECTIVES CONCERNING LIFE-PROLONGING CARE, TREATMENT, SERVICES, AND PROCEDURES:

_____
_____
_____
_____
_____
_____
_____

"(b) SPECIAL PROVISIONS AND LIMITATIONS:

_____
_____
_____
_____
_____
_____

"BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

"I sign my name to this form on _____.

(date)

at: _____

_____ (address)

_____
(Signature)

"WITNESSES

"I declare that the person who signed or acknowledged this document is personally known to me, that the person signed or acknowledged this durable power of attorney for health care in my presence, and that the person appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as the attorney in fact by this document, nor am I the health-care provider of the principal or an employee of the health-care provider of the principal.

First Witness
Signature: _____
Home Address: _____
Print Name: _____
Date: _____
Second Witness
Signature:

Print Name: _____

Date: _____

(AT LEAST 1 OF THE WITNESSES LISTED ABOVE SHALL ALSO SIGN THE FOLLOWING DECLARATION.)

"I further declare that I am not related to the principal by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal under a currently existing will or by operation of law.

Signature: _____

Signature: _____"

Document 1 of 1

Source:
District of Columbia Code/DIVISION III DECEDENTS' ESTATES AND FIDUCIARY RELATIONS /TITLE 21 FIDUCIARY RELATIONS AND THE MENTALLY ILL /CHAPTER 22 HEALTH-CARE DECISIONS /§ 21-2206. Rights and duties of attorney in fact

§ 21-2206. Rights and duties of attorney in fact.

(a) Subject to any express limitations in the durable power of attorney for health care, an attorney in fact shall have all the rights, powers and authority related to health-care decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

(1) The authority to grant, refuse or withdraw consent to the provision of any health-care service, treatment, or procedure;

(2) The right to review the health care records of the principal;

(3) The right to be provided with all information necessary to make informed health-care decisions;

(4) The authority to select and discharge health-care professionals; and

(5) The authority to make decisions regarding admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out these decisions.

(b) (1) Except as provided in paragraph (2) of this subsection and unless a durable power of attorney for health care provides otherwise, the designated attorney in fact, if known to a health-care provider to be available and willing to make a particular health-care decision, shall have priority over any other person to act for the principal in all matters regarding health care.

(2) A designated attorney in fact shall not have the authority to make a particular health-care decision, if the principal is able to give or withhold informed consent with respect to that decision.

(c) In exercising authority under a durable power of attorney for health care, the attorney in fact shall have a duty to act in accordance with:

(1) The wishes of the principal as expressed in the durable power of attorney for health care; or

(2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.

(d) Nothing in this chapter shall affect any right that an attorney in fact may have, independent of the designation in a durable power of attorney for health care, to make or otherwise participate in health-care decisions on behalf of the principal.

(1981 Ed., § 21-2206; Mar. 16, 1989, D.C. Law 7-189, § 7, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(g), 40 DCR 6311.)

SLIDES

SLIDE 1

WHY DO YOU NEED A WILL

- To dispose of your assets in a way that differs from the intestate scheme.
- To name preferred guardians of the persons of your minor children.
- To establish trusts to hold your children's and grandchildren's shares beyond their eighteenth or twenty-first birthdays.
- To establish a trust for your spouse to provide management, to preserve the assets, and/or to direct the residue upon the spouse's death.
- To implement estate tax minimization planning.
- To protect assets from potential creditors of the beneficiaries.

SLIDE 2

INTESTATE DISTRIBUTION

VIRGINIA

If surviving spouse is a parent or grandparent of all descendants of decedent surviving, spouse takes all.

If surviving spouse is not a parent or grandparent of all descendants of decedent surviving, spouse takes 1/3, children and descendants take 2/3 equally, per stirpes.

DISTRICT OF COLUMBIA

If spouse and descendants survive and spouse has no other descendants, spouse takes 2/3, descendants 1/3; if spouse and descendants survive and spouse has other descendants, spouse takes 1/2, descendants take 1/2.

MARYLAND

If spouse and minor children survive, spouse takes 1/2; children and descendants take 1/2 equally, per stirpes.

If spouse and non-minor children or other descendants survive, spouse takes first $15,000 plus 1/2 of residue; children and descendants take balance equally, per stirpes.

SLIDE 3

INTESTATE DISTRIBUTION

VIRGINIA

If decedent leaves spouse who is parent or grandparent of all surviving descendants of decedent, or if decedent has no surviving descendants, spouse takes all.

If decedent leaves spouse and children or descendants of deceased children of whom spouse is not the parent or grandparent, spouse takes 1/3; children and descendants of deceased children take 2/3 equally, per stirpes.

If decedent leaves no spouse, children and descendants of deceased children take all equally, per stirpes.

If decedent leaves no spouse or descendants, relatives take in following order:

- parents
- siblings and descendants of deceased siblings, per stirpes
- more distant relatives

SLIDE 4

INTESTATE DISTRIBUTION

DISTRICT OF COLUMBIA

If decedent leaves spouse but no descendants and no parents, spouse takes all.

If decedent leaves spouse and any descendant, and spouse has no other descendants, spouse takes 2/3, children and descendants of deceased children take 1/3 equally, per stirpes.

If decedent leaves spouse and no descendants, but parents, spouse takes 3/4; parents take 1/4.

If decedent leaves spouse and any descendants, and spouse has other descendants, spouse takes 1/2, descendants take 1/2.

If decedent leaves no spouse, children and descendants of deceased children take all equally, per stirpes.

If decedent leaves no spouse or descendants, relatives take in following order:

- parents
- siblings and descendants of deceased siblings, per stirpes
- more distant relatives

SLIDE 5

INTESTATE DISTRIBUTION

MARYLAND

If decedent leaves spouse and minor child, spouse takes 1/2; children and descendants of deceased children take 1/2 equally, per stirpes.

If decedent leaves spouse and descendants but no minor children, spouse takes first $15,000 plus 1/2; children and descendants of deceased children take balance equally, per stirpes.

If decedent leaves spouse and no descendants, but a parent, spouse takes first $15,000 plus ½ of balance; parents take the balance.

If decedent leaves spouse and no descendants and no parents, spouse takes all.

If decedent leaves no spouse, children and descendants of deceased children take all equally, per stirpes.

If decedent leaves no spouse and no descendants, relatives take in following order:

- parents
- siblings and descendants of deceased siblings, per stirpes
- more distant relatives

SLIDE 6

EXAMPLES OF PROPERTY PASSING OUTSIDE THE WILL

b. Joint and survivorship property.

c. Tenancy by the entirety property.

d. Life insurance.

e. Annuities.

f. Corporate pension and profit-sharing and 401(k) plans and individual retirement accounts, other corporate retirement plans.

g. Pay-On-Death accounts.

SLIDE 7

POSSIBLE FIDUCIARIES

Family Members as Fiduciaries

Advantages

a. Familiarity with your financial affairs as well as your personal wishes.

b. May serve without compensation. (But if family member hires investment manager as he probably should, investment management fee is the same as the trustee fee, so no savings.)

Disadvantages

1. May lack skills and experience to handle more complex estates or trusts.

2. May lack objectivity in family disputes.

SLIDE 8

POSSIBLE FIDUCIARIES

Professional Advisors as Fiduciaries

Advantages

a. Likely to be familiar with your financial affairs.

b. Likely to have skills and experience necessary to handle more complicated estate or trusts.

c. Can be objective in family disputes.

Disadvantages

1. May be unwilling to serve because of liability or other concerns.

2. Cost may be prohibitive for modest estates.

3. Probably unethical for lawyer to suggest himself as trustee.

d. Not trained in investment management.

SLIDE 9

POSSIBLE FIDUCIARIES

Banks or Trust Companies as Fiduciaries

Advantages	Disadvantages
II Have skills and experience necessary to handle more complicated estates or trusts.	1. Cost may be prohibitive for modest estates.
II Can be objective in family disputes.	2. May refuse to resign if trust does not permit someone to discharge and replace.
II No extra charge for serving as trustee: same fee as for pure investment management.	

SLIDE 10

COMPARISON OF THE UTMA AND THE UGMA

1. Lifetime Transfers

UGMA - Only securities, cash, annuities and ownership of life insurance could be transferred; life insurance proceeds could not be made payable to custodian.

UTMA - Any type of property may be transferred; custodian may be designated beneficiary of life insurance; employee benefits, or other contractual rights.

SLIDE 11

COMPARISON OF THE UTMA AND THE UGMA

2. Transfers by intestacy or will or trust without specific authorization.

UGMA - Personal representative or trustee not permitted to transfer property to custodian unless specifically authorized by will or trust.

UTMA - Fiduciary may name a custodian and may make a transfer to a custodian even without authorization in the governing instrument.

SLIDE 12

COMPARISON OF THE UTMA AND THE UGMA

3. Nomination of Custodian.

UGMA - Transferor could not revocably nominate custodian to receive property upon happening of future event. Only an adult member of minor's family, minor's guardian, or trust company could serve as successor custodian.

UTMA - Transferor may nominate custodian to receive property upon happening of future event. Any adult person or a trust company may serve as successor custodian.

SLIDE 13

INSURANCE

Comparison of Term Life, Whole Life, and Universal Life

1. Term Life Insurance.

- Provides coverage for a specific period of time.
- Provides death benefit only, no cash value build-up.
- Likely to be cheaper than whole life, but premiums will increase as insured ages and policy is renewed.
- Most common type - level premium term. The premium remains the same for a guaranteed period of insurability, typically 10 years (cheapest), 15 years or 20 years (more expensive).
- Generally individual level premium term policies are CHEAPER than group term policies, which usually have escalating premiums in age brackets.

2. Whole Life Insurance.

- Stays in force for the lifetime of the insured unless policy is canceled.
- Provides death benefit and cash value build-up.
- Premiums typically remain constant.

SLIDE 14

INSURANCE

Comparison of Term Life, Whole Life, and Universal Life

3. Universal Life Insurance.

- Provides death benefit and savings component.
- After initial payment, typically no contractually scheduled premium payments so long as cash value is sufficient to cover the cost of death benefit and other charges.
- Insured may vary level of death benefit and premiums according to his or her current needs.
- Insured may be able to custom-select the investment vehicles for the policy, typically in approved mutual funds, and in that case will have both investment opportunity and risk as to death benefits based on investment performance.

SLIDE 15

INSURANCE

Uses for Life Insurance

1. To support your dependents after your death.

2. To pay your debts, medical bills, funeral expenses, and other costs of administering your estate.

3. For business reasons, such as offsetting the economic loss your business may suffer as a result of your death or to fund a buy-sell agreement.

4. To provide liquidity to pay estate taxes, so that other assets will not have to be sold to meet these obligations. Frequently a second-to-die policy insuring lives of both husband and wife, paying only at second death, is used in this circumstance.

SLIDE 16

ASSET PRESERVATION PLANNING

Conditions

- Only if you are solvent, have positive net worth.
- Not with intent to hinder, delay or defraud your creditors.
- Only in context of traditional estate planning, i.e.,
  - -- income tax savings;
  - -- estate, gift, generation-skipping tax savings;
  - -- probate avoidance;
  - -- protection from creditors of donee.

SLIDE 17

PERSONS WHO MAY BE INTERESTED IN ASSET PROTECTION PLANNING

- Professionals concerned about the adequacy of their professional liability coverage.
- Persons engaged in a business from which personal liability could arise.
- Persons seeking to avoid spousal claims at divorce or death.
- Persons concerned about liabilities arising from ownership of real estate.
- Persons who wish to protect assets from creditors of other family members.

SLIDE 18

ASSET PRESERVATION PLANNING

Techniques

- Creation of or maintenance of spousal joint ownership as tenants by the entirety; available for personalty, including bank accounts and securities.
- Gifts to spouse, children, grandchildren
  - -- outright
  - -- irrevocable trust, possibly life insurance.
- Sale of asset to children or to a trust for children.
- Life interests/remainders: joint purchases with children, sales to children, gifts to children.
- Personal residence GRIT.
- Qualified retirement plans.
- Foreign trusts in creditor havens.
- Business interests.
- Avoiding inheritance.
- Family Limited Partnership or Limited Liability Company.
- Certain U.S. and foreign jurisdictions have asset protection trust statutes.

SLIDE 19

REVOCABLE LIVING TRUSTS

Advantages

- Confidentiality/Privacy.
- Avoidance of complexity and expense of probate.
- Expedited transfer of assets to beneficiaries.
- Smooth transition to management in the event of the Settlor's incapacity.
- Avoidance of ancillary probate of real estate in other states.
- Avoidance of post mortem court accountings.
- Any tax planning you can do in a Will you can do in a Revocable Trust.
- May be revoked or amended at any time.
- May be named beneficiary of and receive benefits under life insurance or retirement plans.
- More difficult for heirs to contest than a Will.

SLIDE 20

REVOCABLE LIVING TRUSTS

Disadvantages

- Cost to establish.
- Burden to establish.
- Trouble and expense to administer/trustees fees if unrelated trustee serves during settlor's life.

SLIDE 21

GENERAL POWERS OF ATTORNEY

A. Lists powers granted to an agent to enable him to manage financial affairs.

B. Virginia, Maryland, and D.C. permit durable powers.

C. Should include description of real property if appropriate.

D. Original may be kept in custody of attorney with letter of instructions.

E. May include power to make gifts, if appropriate.

F. Should preclude power to pour over to Revocable Trust or to create a Revocable Trust.

SLIDE 22

ADVANCE MEDICAL DIRECTIVES

A. Virginia and Maryland allow "health care power of attorney" and "living will" to be combined in a single document and provide statutory form for this document.

B. District of Columbia still uses Health Care Power of Attorney, which may be supplemented with non-statutory Living Will or Natural Death Act Declaration.