

Explaining core estate planning documents

These measures can help ensure your wishes are respected.

Estate planning is an integral aspect of wealth management. As you move from one stage of life to the next, your financial and personal situation may change. Below is an explanation of the essential estate planning documents you should have in place and should periodically update to ensure that your wishes regarding your health, finances and other personal matters are respected if you become incapacitated and when you pass away. Be sure to talk to your financial advisor about your estate planning needs.

HEALTHCARE

Healthcare documents help others make sound decisions about your health in the event that you are unable to do so yourself.

LIVING WILL

This document expresses your desires for the withdrawal or continuation of life-prolonging treatment if you are unable to act or speak for yourself. It applies only to end-of-life conditions such as a terminal illness or a persistent vegetative state.

HEALTHCARE PROXY

This document appoints another person to make healthcare decisions for you and consent to medical treatment on your behalf if you are unable to act or speak for yourself. Unlike the living will, application of the healthcare proxy is not limited to end-of-life conditions. It can apply in any situation in which you are incapacitated and a healthcare decision has to be made on your behalf.

FINANCIAL POWER OF ATTORNEY

A financial power of attorney gives someone you trust, your appointed “attorney in fact,” the authority to handle financial, legal and personal matters on your behalf. Permissible powers and required forms of execution vary by state law.

There are different types of powers of attorney:

DURABLE

Most powers of attorney are durable, meaning they are effective upon signing and remain in effect until you revoke the power or pass away. This power remains effective upon your incapacity.

SPRINGING

A springing power of attorney becomes effective only upon the occurrence of a future event, such as incapacity. In this case, the attorney in fact may not act on your behalf until you are unable to handle your own affairs due to mental or physical disability.*

LIMITED

A power of attorney can also be used for limited purposes, such as naming another person to handle a real estate transaction on your behalf if you are out of town.

LAST WILL AND TESTAMENT (WILL)

The will directs the distribution of property owned in your individual name to your beneficiaries at your death. It does not apply to the distribution of the following property:

- Jointly owned property with survivorship provisions
- Property with a designated beneficiary, such as:
 - Retirement accounts, annuities and life insurance policies
 - Pay-on-death (bank accounts) and transfer-on-death (investment accounts)
 - Property titled in a trust

*Springing power of attorney is not applicable in all states.

The will names an executor or personal representative to administer the probate estate and can also name a guardian for your minor children.

PERSONAL PROPERTY MEMORANDUM

A separate writing/tangible personal property memorandum can be used to supplement your will. This document allows you to direct disposition of small tangible personal property items such as jewelry, collectibles and art work. It can be separate from your will and can usually be changed without requiring your will to be amended, although it would be referenced in your will.

REVOCABLE LIVING TRUST

Revocable trusts can be used to maintain management of your financial affairs during a period of incapacity and to direct distribution of your property at your death. Here's how it works:

- The person establishing the trust, the grantor, meets with an attorney who will create the revocable living trust according to the grantor's wishes. The trust will provide instructions for how the grantor's assets are to be managed during life and after incapacity and death. Since the trust is revocable, the grantor may revoke or amend the trust during life.
- Assets are retitled in the name of the revocable living trust and are managed by the trustee according to the terms of the trust.
- The grantor typically serves as trustee while they are living and able; the trust instrument appoints a successor trustee to serve upon the grantor's incapacity or death.

Revocable trusts provide several benefits, including:

- **Avoiding probate:** Upon death of the grantor, the successor trustee steps in to administer and distribute the trust assets without court involvement.
- **Avoiding guardianship:** If the grantor becomes incapacitated while serving as trustee, the successor trustee takes over property of the trust without the need for a guardianship or court intervention.
- **Privacy:** Unlike a will, which is filed with the court upon death, there is no requirement for a trust to be filed with the court to become public record.
- **Flexibility:** The terms of the revocable trust document can be changed during the grantor's lifetime.

The revocable trust works in conjunction with a pour-over will. A pour-over will provides that any assets not already titled in the revocable trust at the grantor's death will pass or "pour over" to the revocable trust and will be distributed under the terms of the revocable trust document.

Your estate planning documents should also address access to and ownership of digital assets, such as usernames, passwords, and electronically stored photos, documents, etc.

Talk to your advisor about
your estate planning needs.

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